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TITLE 11

LABOR AND INDUSTRIAL RELATIONS

(CHAPTERS 1-7 IN VOLUME 7A)

CHAPTER 9

WORKERS' COMPENSATION

Subchapter 1 — General Provisions

11-9-102. Definitions.

CASE NOTES

Analysis

Date or Time of Accident.
Healing Period.
Injury.
Intoxicants.
Medical Opinions.
Wages.

Date or Time of Accident.

Arkansas Workers' Compensation Commission found that appellant lacked credibility, which was based on her inconsistent reports about the injury, and although the inability to identify a certain date did not operate as a bar to appellant from obtaining compensation, it was within the province of the Commission to consider the date confusion a matter of credibility; the Commission questioned whether the slip and fall at work had taken place, and substantial evidence supported the finding, Swink v. Rest. Mgmt., 2012 Ark. App. 490, — S.W.3d — (2012).

Healing Period.

Arkansas Workers' Compensation Commission did not err under subdivision (12) of this section in failing to award an employee temporary total disability benefits beyond March 9, 2010 because there was a substantial basis for its finding that the employee's healing period for the compensable back injury had ended by March 9, 2010. Towler v. Tyson Poultry, Inc., 2012 Ark. App. 546, — S.W.3d — (2012).

Injury.

Denial of permanent-disability benefits for the employee's compensable back injury was inappropriate pursuant to subdivision (4)(F)(ii)(*a*) of this section because unrefuted testimony established that prior to the accident, he never had serious back pain and he was physically able to perform many activities and all of his

work duties. Wright v. St. Vincent Doctors Hosp. Indem. Ins. Co. of N. Am., 2012 Ark. App. 153, 390 S.W.3d 779 (2012).

Workers' Compensation Commission found that the worker's symptoms could not be causally related to his injury, for purposes of subdivision (4) of this section, but nothing negated the possibility of any causal relationship, and therefore the record did not support this medical conclusion; the court reversed and remanded. Vijil v. Schlumberger Tech. Corp., 2012 Ark. App. 361, — S.W.3d — (2012).

As there was an obvious, direct correlation between the injury appellant claimed he suffered at work (a blister) and the specific incident he alleged caused that injury (repeatedly walking wearing ill-fitting work-supplied boots), it was not an "unexplained injury"; therefore, he was entitled to benefits under subdivision (4)(A)(i) of this section. Pearson v. Worksource, 2012 Ark. 406, — S.W.3d —, 2012 Ark. LEXIS 431 (Nov. 1, 2012).

Claimant had the burden, under subdivision (4)(E) of this section, to prove a compensable injury by a preponderance of the evidence. Swink v. Rest. Mgmt., 2012 Ark. App. 490, — S.W.3d — (2012).

There was evidence supporting appellant's claim that she suffered a compensable injury to her knee, but this did not warrant reversal, as the question was whether substantial evidence supported the Arkansas Workers' Compensation Commission's decision, not whether the evidence supported contrary findings. Swink v. Rest. Mgmt., 2012 Ark. App. 490, — S.W.3d — (2012).

Workers' Compensation Commission found from the evidence that appellant had been seen by a doctor previously for her knee issues, which supported the conclusion that if she did fall at work, this did not play a causal role in her knee issues; there was a substantial basis for denying the claim. Swink v. Rest. Mgmt., 2012 Ark. App. 490, — S.W.3d — (2012).

Pursuant to subdivision (4)(F)(ii) of this section, an appellate court declined to reverse an award of disability benefits to an employee for a spine injury because there was ample evidence that the employee was not capable of performing the work duties that the employee had previously been able to perform before a work-related fall. Efird v. Whelan Sec., Inc., 2012 Ark. App. 548, — S.W.3d — (2012).

Workers' compensation benefits were not awarded to a claimant for gradual-onset injuries to the neck and back under subdivisions (4)(A) and (E) of this section because the injuries were not reported between 2009 and 2011, and no medical treatment was sought between 2003 and 2011. It was the role of the Arkansas Workers' Compensation Commission to judge the credibility of the witnesses. King v. Superior Wheels, 2013 Ark. App. 95, — S.W.3d — (2013).

Arkansas Workers' Compensation Commission found the claimant was not credible and assigned minimal weight to one doctor's report, but found another doctor's statement that the claimant did not have an injury to his head, spine, or neck belied the claimant's assertion in that regard; because the claimant did not establish a causal relationship between his injury and his employment, the conclusion that he did not prove he sustained a compensable injury was supported by substantial evidence. Vijil v. Schlumberger Tech., Corp., 2013 Ark. App. 346, — S.W.3d — (2013).

Intoxicants.

Workers' compensation benefits claimant failed to rebut by a preponderance of the evidence the presumption under subdivision (4)(B)(iv) of this section that an accident involving the severance of his fingers was substantially occasioned by the use of marijuana. The evidence showed that the claimant was using a machine in a manner other than how he was instructed, he tested positive for marijuana metabolites, and he admitted that marijuana made him less attentive, made it harder for him to concentrate, and made it more difficult for him to react quickly. Hudgens v. Aid Temp. Servs., 2012 Ark. App. 471, — S.W.3d — (2012).

Arkansas Workers' Compensation Commission did not err in affirming the award of benefits for a left-wrist injury sustained by claimant in a fall from a ladder. Because no test was performed on claimant in proximity to his work accident to establish the presence of drugs or alcohol in his system, the presumption of non-compensability under subdivision (4)(B)(iv)(*b*) of this section was not triggered; therefore, the burden did not shift to claimant to disprove that his work accident was substantially occasioned by the use of mari-

juana or alcohol. Weld Rite, Inc. v. Dungan, 2012 Ark. App. 526, — S.W.3d — (2012).

Medical Opinions.

For purposes of § 11-9-508(a), substantial evidence supported the determination that the treatment given by one doctor was causally related to and necessary for treating the claimant's compensable injury; a 2006 MRI showed a moderate herniation, but a 2010 MRI showed a large herniation, and although a medical center claimed that a physican's opinion concerning compensability was not stated within a reasonable degree of certainty under subdivision (16)(B) of this section, the court disagreed because the physician and doctor related the treatment and surgery to the compensable cervical-spine injury, the Workers' Compensation Commission credited their opinions, and the court left the weighing of the medical evidence to the Commission. St. Edward Mercy Med. Ctr. & Sisters of Mercy Health Sys. v. Chrisman, 2012 Ark. App. 475, — S.W.3d — (2012).

Wages.

"Full wages" under § 11-9-807(b) refers to the money rate paid to recompense services rendered, and vacation pay is that sum received as an employee benefit when no services are rendered. Therefore, in a workers' compensation case, a benefits claimant was entitled to receive temporary-total disability benefits because he did not receive his full wages during his period of disability where he received vacation pay; vacation pay was the sum received as an employee benefit when no services were rendered. St. Edward Mercy Med. Ctr. v. Howard, 2012 Ark. App. 673, — S.W.3d —, 2012 Ark. App. LEXIS 790 (Nov. 28, 2012).

11-9-105. Remedies exclusive — Exception.

CASE NOTES

Analysis

Common-law Remedies for Retaliation.
Employees.
Jurisdiction.

Common-law Remedies for Retaliation.

By enacting § 16-118-107, the Arkansas General Assembly did not intend to revive the individual cause of action for common-law remedies for retaliation under Arkansas workers' compensation law which it expressly annulled at § 11-9-107. Lambert v. LQ Mgmt., L.L.C., 2013 Ark. 114, — S.W.3d — (2013).

Employees.

Negligence action against an air-ambulance helicopter pilot brought by a flight nurse and an EMT was properly dismissed because the pilot was immune from suit under the statute; at the time of a helicopter accident, the pilot, as a co-employee, was performing the employer's duty to provide a safe work place for the nurse and EMT. Miller v. Enders, 2013 Ark. 23, — S.W.3d — (2013).

Negligence action against an air-ambulance helicopter pilot brought by a flight nurse and an EMT was properly dismissed because the pilot was immune from suit under the statute; at the time of a helicopter accident, the pilot, as a co-employee, was performing the employer's duty to provide a safe work place for the nurse and EMT. Miller v. Enders, 2013 Ark. 23, — S.W.3d — (2013).

Jurisdiction.

Filing of a workers' compensation claim did not toll the statute of limitations on a wrongful death suit; the Arkansas Workers' Compensation Commission's primary jurisdiction to determine workers' compensation coverage did not prevent the tort action from being filed while the workers' compensation claim was pending. Frisby v. Milbank Mfg. Co., 688 F.3d 540 (8th Cir. 2012).

Company was entitled to a writ of prohibition, because the lung disease and silicosis claim was covered by the Arkansas Workers' Compensation Act, and the circuit court lacked jurisdiction to determine whether the claimant's alleged disease from his exposure at home was covered under the Act; the time of disablement was within three years of his last injurious exposure, and the claimant

failed to file his claim within the one-year limitation period. Porocel Corp. v. Circuit Court of Saline County, 2013 Ark. 172, — S.W.3d — (2013).

11-9-106. Penalties for misrepresentation.

(a)(1)(A) Any person or entity who willfully and knowingly makes any material false statement or representation, who willfully and knowingly omits or conceals any material information, or who willfully and knowingly employs any device, scheme, or artifice for the purpose of:

(i) Obtaining any benefit or payment;

(ii) Defeating or wrongfully increasing or wrongfully decreasing any claim for benefit or payment; or

(iii) Obtaining or avoiding workers' compensation coverage or avoiding payment of the proper insurance premium, or who aids and abets for any of said purposes, under this chapter shall be guilty of a Class D felony.

(B) Fifty percent (50%) of any criminal fine imposed and collected under this subdivision or subdivision (a)(2) of this section shall be paid and allocated in accordance with applicable law to the Death and Permanent Total Disability Trust Fund administered by the Workers' Compensation Commission.

(2) It is to be understood that any person or entity with whom any person identified in subdivision (a)(1) of this section has conspired to achieve the proscribed ends shall, by reason of such conspiracy, be guilty as a principal of a Class D felony.

(b) A copy of subdivision (a)(1) of this section shall be placed on all forms prescribed by the Workers' Compensation Commission for the use of injured employees claiming benefits and for the use of employers in responding to such employees' claims under this chapter.

(c) Where the Workers' Compensation Commission or the Insurance Commissioner finds that false statements or representations were made willfully and knowingly, that material information was willfully and knowingly omitted or concealed, or that any device, scheme, or artifice was willfully and knowingly employed for the purpose of:

(1) Obtaining benefits or payments;

(2) Obtaining, wrongfully increasing, wrongfully decreasing, or defeating any claim for benefit or payment; or

(3) Obtaining or avoiding workers' compensation coverage or avoiding payment of the proper insurance premium under this chapter or that any other criminal violations related thereto were committed, the chair of the Workers' Compensation Commission or the Insurance Commissioner shall refer the matter for appropriate action to the prosecuting attorney having criminal jurisdiction in the matter.

(d)(1)(A)(i) There shall be established within the State Insurance Department a Workers' Compensation Fraud Investigation Unit, funded by the Workers' Compensation Commission, which will be headed and supervised by a director who may also serve as the director of any other designated insurance fraud investigation divi-

sion within the department, in which event the director's compensation shall be paid solely from the funds of such insurance fraud investigation division.

(ii) The Workers' Compensation Fraud Investigation Unit of the State Insurance Department is designated as a law enforcement agency.

(B)(i) The unit herein designated will investigate workers' compensation fraud, additional criminal violations that may be related thereto, and any other insurance fraud matters as may be assigned at the discretion of the director.

(ii) The Insurance Commissioner shall designate the personnel assigned to the unit, who shall conduct investigations under this subdivision (d)(1)(B).

(iii) A person designated and employed as an investigator by the unit shall:

(a) Be a certified law enforcement officer under § 12-9-101 et seq.; and

(b) Have statewide law enforcement jurisdiction and authority.

(iv) Personnel hired as law enforcement officers shall be state–certified law enforcement or the equivalent in national or military law enforcement experience as approved by the Arkansas Commission on Law Enforcement Standards and Training.

(2) The Insurance Commissioner and his or her deputies and assistants and the fraud director and his or her deputies and assistants shall be vested with the power of enforcing this section and rendering more effective the disclosure and apprehension of persons or entities who abuse the workers' compensation system as established by the General Assembly by making false or misleading statements for the purpose of either obtaining, wrongfully increasing, wrongfully decreasing or defeating the payment of benefits, obtaining or avoiding workers' compensation coverage, or avoiding payment of the proper insurance premium.

(3) It shall be the duty of the unit to assist the Insurance Commissioner and the department in the performance of their duties, and, further, to determine the identity of carriers, employers, or employees who within the State of Arkansas have violated subsection (a) of this section and report the violation to the Workers' Compensation Commission and to the Insurance Commissioner, who shall, in turn, be responsible for reporting the violation to the prosecuting attorney having criminal jurisdiction in the matter.

(4)(A) With respect to the subject of any investigation being conducted by the unit, the Insurance Commissioner and his or her deputies and assistants and the fraud director and his or her deputies and assistants shall have the power of subpoena and may:

(i) Subpoena witnesses;

(ii) Administer oaths or affirmations and examine any individual under oath; and

(iii) Require and compel the production of records, books, papers, contracts, and other documents.

(B) Subpoenas of witnesses shall be served in the same manner as if issued by a circuit court.

(C)(i) If any individual fails to obey a subpoena issued and served pursuant to this section with respect to any matter concerning which he or she may be lawfully interrogated, then upon application of the commissioner or fraud director, the Pulaski County Circuit Court or the circuit court of the county where the subpoena was served may issue an order requiring the individual to comply with the subpoena and to testify.

(ii) Any failure to obey the order of the court may be punished by the court as a contempt thereof.

(D) If any person has refused in connection with an investigation by the fraud director to be examined under oath concerning his or her affairs, then the fraud director is authorized to conduct and enforce by all appropriate and available means any examination under oath in any state or territory of the United States in which any officer, director, or manager may then presently be to the full extent permitted by the laws of the state or territory.

(E) Any person testifying falsely under oath or affirmation in this state as to any matter material to any investigation or hearing conducted pursuant to this subdivision (d)(4), or any workers' compensation hearing, shall upon conviction be guilty of perjury and punished accordingly.

(5) Fees and mileage of the officers serving the subpoenas and of the witnesses in answer to subpoenas shall be as provided by law.

(6)(A) Every carrier or employer who has reason to suspect that a violation of subdivision (a)(1) of this section has occurred shall be required to report all pertinent matters relating thereto to the unit.

(B) No such carrier shall be liable to any employer or employee for any such report, and no employer shall be liable to any employee for such a report unless it knowingly and intentionally includes false information.

(C)(i) Any such carrier or employer who willfully and knowingly fails to report any such violation shall be guilty of a misdemeanor and upon conviction shall be punished by a fine not to exceed one thousand dollars ($1,000) or by imprisonment for a period not to exceed one (1) year or by both fine and imprisonment.

(ii) Fifty percent (50%) of any criminal fine imposed and collected under this subdivision (d)(6)(C) shall be paid and allocated in accordance with applicable law to the fund administered by the commission.

(D) Although not mandated to report suspected violations of subdivision (a)(1) of this section by an employer or employee, any employee who does make such a report shall not be liable to the employer or employee whose suspected violations he or she has reported.

(E) In addition, any immunity from liability provisions of the Arkansas Insurance Code, § 23-60-101 et seq., applicable to the

reporting of suspected fraudulent insurance acts shall also be applicable to the reporting of information under this subdivision (d)(6).

(e)(1) For the purpose of imposing criminal sanctions or a fine for violation of the duties of this chapter, the prosecuting attorney shall have the right and discretion to proceed against any person or organization responsible for such violations, both organizational and individual liability being intended by this chapter.

(2) The prosecuting attorney of the district to whom a suspected violation of subsection (a) of this section, § 11-9-402(c), § 11-9-406, or any other criminal violations that may be related thereto, has been referred shall, for the purpose of assisting him or her in such prosecutions, have the authority to appoint as special deputy prosecuting attorneys licensed attorneys at law in the employment of the unit or any other designated insurance fraud investigation division within the department. Such special deputy prosecuting attorneys shall, for the purpose of the prosecutions to which they are assigned, be responsible to and report to the prosecuting attorney.

(f) Notwithstanding any other provision of law, it is the specific intent of this section that active investigatory files as maintained by the department and by the unit be deemed confidential and privileged and not be made open to the public until the matter under investigation is closed by the fraud director with the consent of the Insurance Commissioner, except that such active investigatory files shall also be subject to any confidentiality provisions of the Arkansas Insurance Code, § 23-60-101 et seq., that are applicable to the investigation of fraudulent insurance acts.

(g) The Insurance Commissioner, with the cooperation and assistance of the Workers' Compensation Commission, is authorized to establish rules and regulations as may be necessary to carry out the provisions of this section.

(h) Nothing in this section shall be deemed to create a civil cause of action.

History. Init. Meas. 1948, No. 4, § 35, Acts 1949, p. 1420; Init. Meas. 1968, No. 1, § 6; Acts 1975 (Extended Sess., 1976), No. 1227, § 17; 1979, No. 253, § 9; A.S.A. 1947, § 81-1335; reen. Acts 1987, No. 1015, § 17; Acts 1993, No. 796, § 5; 1997, No. 808, §§ 1-13; 1999, No. 881, § 1; 2001, No. 743, § 1; 2013, No. 984, § 1.

Amendments. The 2013 amendment inserted (d)(1)(A)(ii); redesignated part of (d)(1)(B)(ii) as (d)(1)(B)(iv); substituted "shall conduct" for "upon meeting the qualifications established by the Arkansas Commission on Law Enforcement Standards and Training, shall have the powers of specialized law enforcement officers of the State of Arkansas for the purpose of conducting" in (d)(1)(B)(ii); inserted (d)(1)(B)(iii); and, in (d)(1)(B)(iv), deleted "specialized" preceding "law enforcement," substituted "be state" for "have a minimum of three (3) years of," and "or the" for "experience or its."

11-9-107. Penalties for discrimination for filing claim.

CASE NOTES

Common-law Remedies for Retaliation.

By enacting § 16-118-107, the Arkansas General Assembly did not intend to revive the individual cause of action for common-law remedies for retaliation under Arkansas workers' compensation law which it expressly annulled at this section. Lambert v. LQ Mgmt., L.L.C., 2013 Ark. 114, — S.W.3d — (2013).

11-9-108. Waiver of compensation void — Exception.

CASE NOTES

Application.

Appellant partially relied on subsection (a) of this section, but her reliance was misplaced; it is true that the terms of a contract, by themselves, cannot convert an employee into an independent contractor if the other surrounding facts do not support that conclusion, but in this case, the Workers' Compensation Commission found that the facts supported appellee's position that appellant was acting as an independent contractor, not an employee, and the court could not say that others could not have reached the same conclusion, such that the court affirmed the denial of benefits. Long v. Superior Senior Care, Inc., 2013 Ark. App. 204, — S.W.3d — (2013).

11-9-114. Heart or lung injury or illness.

CASE NOTES

Accident as Cause Shown.

There was substantial evidence to support the denial by an administrative law judge and the Workers' Compensation Commission of an employee's claim pursuant to this section, as the employee did not prove by a preponderance of the evidence that he suffered a compensable heart attack while working for the employer; there was no evidence to show what caused the type of plaque rupture that he suffered. Kimble v. Hino Motors Mfg. United States, Inc., 2012 Ark. App. 646, — S.W.3d —, 2012 Ark. App. LEXIS 758 (Nov. 7, 2012).

Subchapter 4 — Employer Liability — Insurance

SECTION.
11-9-412. Motor carrier drivers.

11-9-411. Effect of payment by other insurers.

CASE NOTES

Employer's Setoff.

Workers' compensation award to an employee who sustained a compensable injury and later received disability-retirement benefits through his retirement plan, part of which he had paid for out of his wages, was subject to an offset based on the extent of the employer's contributions to the disability policy under this section. Brigman v. City of West Memphis, 2013 Ark. App. 66, — S.W.3d — (2013).

11-9-412. Motor carrier drivers.

(a) As used in this section:

(1) "Commercial motor vehicle" means a motor vehicle or combination of motor vehicles used in commerce to transport passengers or property;

(2) "Driver" means a person, including but not limited to a member of a team, who operates a commercial motor vehicle;

(3) "Motor carrier" means a person, partnership, corporation, or limited liability company that provides truck transportation; and

(4) "Owner-operator" means a person, partnership, corporation, or limited liability company that owns or holds under a bona fide lease a commercial motor vehicle that is provided to a motor carrier.

(b)(1) Notwithstanding any other law, an owner-operator that provides a commercial motor vehicle and the services of one (1) or more drivers to a motor carrier under a written contract, and each driver so provided, is not an employee of the motor carrier but is an independent contractor of the motor carrier.

(2) The motor carrier shall not be liable for any compensation required by this chapter to the owner-operator, its employees, or subcontractors.

(3) An owner-operator that is under exclusive contract to the motor carrier may elect to secure coverage for the owner-operator and for one (1) or more drivers of the owner-operator through a workers' compensation insurance policy or authorized self-insurance plan that insures the motor carrier if:

(A) The election by the owner-operator is made in writing as part of a written contract between the owner-operator and the motor carrier; and

(B) The owner-operator pays the premiums as requested by the motor carrier.

(4) An owner-operator's election, whether or not under subdivision (b)(3) of this section, to be covered and to have one (1) or more of its drivers covered under a workers' compensation insurance policy or authorized self-insurance plan shall not terminate or otherwise affect the independent-contractor status of the owner-operator or of any of its drivers.

History. Acts 2013, No. 1166, § 1.

Subchapter 5 — Accidental Injury or Death

11-9-508. Medical services and supplies — Liability of employer.

CASE NOTES

Analysis

Additional Benefits.
Claims for Benefits.
Nursing Services.
Reasonably Necessary Treatment.

Additional Benefits.

Arkansas Workers' Compensation Commission's decision denying a claim for additional medical treatment under subsection (a) of this section was supported by substantial evidence, because claimant's hip was normal from a neurological standpoint and a doctor testified there was no reasonable expectation that hip replacement would improve claimant's condition. Cumbie v. Bost Human Dev. Serv., 2012 Ark. App. 389, — S.W.3d — (2012).

Decision to deny a claimant's request for additional medical benefits under subsection (a) of this section was supported by substantial evidence since the Arkansas Workers' Compensation Commission elected to credit a doctor's note, which stated that the claimant's subjective complaints of pain exceeded the other objective findings and returned her to work without restrictions, over another report recommending conservative treatment substantially similar to what the claimant had already received. Belcher v. River Valley Health & Rehab, 2012 Ark. App. 527, — S.W.3d — (2012).

Arkansas Workers' Compensation Commission's opinion displayed a substantial basis under subsection (a) of this section for denying additional medical treatment received by an employee after July 9, 2010, which included both of the employee's back surgeries, because after reporting a compensable injury to the employer in April 2008, the employee continued to work and did not seek medical treatment until July 2008. Towler v. Tyson Poultry, Inc., 2012 Ark. App. 546, — S.W.3d — (2012).

In a workers' compensation case, substantial evidence supported a decision that a claimant was not entitled to additional medical treatment for his left elbow; although two tests revealed a tear of a distal-biceps tendon in the elbow, a more recent test did not reveal that injury. Moreover, a doctor opined that surgery would not have improved the claimant's elbow complaints. Greene v. Cockram Concrete Co., 2012 Ark. App. 691, — S.W.3d —, 2012 Ark. App. LEXIS 815 (Dec. 12, 2012).

Arkansas Workers' Compensation Commission did not err by awarding benefits for additional and continued medical treatment under subsection (a) of this section for a knee replacement surgery recommended by claimant's doctor after she suffered a knee injury at work; because claimant was working when she sustained the compensable injury and was unable to work after the injury, substantial evidence indicated the injury was not merely a temporary aggravation of a preexisting condition. Saline Mem. Hosp. & Risk Mgmt. Res. v. Smith, 2013 Ark. App. 29, — S.W.3d — (2013).

Arkansas Workers' Compensation Commission did not err by awarding benefits for additional and continued medical treatment under subsection (a) of this section for a knee replacement surgery recommended by claimant's doctor after she suffered a knee injury at work; because claimant was working when she sustained the compensable injury and was unable to work after the injury, substantial evidence indicated the injury was not merely a temporary aggravation of a preexisting condition. Saline Mem. Hosp. & Risk Mgmt. Res. v. Smith, 2013 Ark. App. 29, — S.W.3d — (2013).

Claims for Benefits.

Arkansas Workers' Compensation Commission did not err under subsection (a) of this section in finding that an employee's colon condition was not related to a compensable cervical spine injury because the evidence that would tend to support a finding that the colon problems were causally connected with the compensable injury was not sufficient to satisfy the employee's burden of proof. Efird v. Whelan

Sec., Inc., 2012 Ark. App. 548, — S.W.3d — (2012).

Denial of the employee's claim for additional medical benefits related to a compensable injury was appropriate under subsection (a) of this section because the Workers' Compensation Commission assigned little weight to a doctor's belief that the employee did not have any immediate exacerbation of pain following the motor-vehicle accident. Thus, it gave little weight to the doctor's opinion that the continued pain and need for treatment were causally related to the work-related accident of 2008. Sanchez v. Pork Group, Inc., 2012 Ark. App. 570, — S.W.3d — (2012).

Based on the medical records and medical opinions presented, Workers' Compensation Commission properly determined that an employee's recent back pain and complaints were the result of a degenerative condition and not a 12-year-old compensable lumbar strain work injury. Walker v. United Cerebral Palsy of Ark., 2013 Ark. App. 153, — S.W.3d — (2013).

Nursing Services.

Finding in a workers' compensation action that the services at a facility were not nursing services was improper under this section because the facility's services were nursing services since they would take care of, minister to, and tend to the employee as a brain-injured individual. Pack v. Little Rock Convention Ctr., 2013 Ark. 186, — S.W.3d — (2013).

Reasonably Necessary Treatment.

Substantial evidence supported the Arkansas Workers' Compensation Commission's decision that the claimant proved, as required by subsection (a) of this section, that additional medical treatment was reasonably necessary in connection with his compensable back injury as the claimant's physician had stated his opinion within a reasonable degree of medical certainty, and he reaffirmed that opinion during his deposition. Hyde's Termite & Pest Control v. Rogers, 2012 Ark. App. 410, — S.W.3d — (2012).

For purposes of subsection (a) of this section, substantial evidence supported the determination that the treatment given by one doctor was causally related to and necessary for treating the claimant's compensable injury; a 2006 MRI showed a moderate herniation, but a 2010 MRI showed a large herniation, and although a medical center claimed that a physican's opinion concerning compensability was not stated within a reasonable degree of certainty under § 11-9-102(16)(B), the court disagreed because the physician and doctor related the treatment and surgery to the compensable cervical-spine injury, the Workers' Compensation Commission credited their opinions, and the court left the weighing of the medical evidence to the Commission. St. Edward Mercy Med. Ctr. & Sisters of Mercy Health Sys. v. Chrisman, 2012 Ark. App. 475, — S.W.3d — (2012).

Because the court affirmed the award of additional medical treatment, the court also affirmed the award of temporary total disability benefits associated with the treatment. St. Edward Mercy Med. Ctr. & Sisters of Mercy Health Sys. v. Chrisman, 2012 Ark. App. 475, — S.W.3d — (2012).

Arkansas Workers' Compensation Commission's findings did not adequately support its denial of additional medical treatment; the fact that injections proposed by the employee's physician were directed toward pain management did not disqualify them from being reasonably necessary under subsection (a) of this section if that treatment was causally related to the compensable injury. Stallworth v. Hayes Mech., Inc., 2013 Ark. App. 188, — S.W.3d — (2013).

11-9-514. Medical services and supplies — Change of physician.

CASE NOTES

Analysis

Appeal.
Right to Change.

Appeal.

Because a medical center did not apprise the Workers' Compensation Commission of an argument concerning the change of physical rules or get a ruling on the argument, this issue was waived the court did not need to address the merits on appeal. St. Edward Mercy Med. Ctr. & Sisters of Mercy Health Sys. v. Chrisman, 2012 Ark. App. 475, — S.W.3d — (2012).

Court did not agree that a medical center sufficiently raised an issue regarding the change of physician rules; neither the administrative law judge (ALJ) nor the Workers' Compensation Commission made any ruling regarding the change of physician rules, the center did not complain about the omission of the issue from the ALJ's decision, and although the center submitted a copy of the signed AR-N form, no argument regarding the change of physician rules was made, plus there was no testimony concerning whether the AR-N form was delivered to the claimant, and thus the court could not reach the merits of the issue. St. Edward Mercy Med. Ctr. & Sisters of Mercy Health Sys. v. Chrisman, 2012 Ark. App. 475, — S.W.3d — (2012).

Right to Change.

Decision to allow a change of physician was supported by substantial evidence because a benefits claimant was not receiving the treatment that she was entitled to due to her first physician's deterioration in health and ultimate death. The claimant went to another doctor because her first physician was unable to perform his duties due to his advanced age and declining health at the time she attempted to treat with him. Wal-Mart Assocs. v. Keys, 2012 Ark. App. 559, — S.W.3d — (2012).

Benefits claimant's treatment was not compensable because she was not referred to a disputed provider by one of her authorized physicians, and she did not apply for a change of physician under this section; the provisions of subsection (f) of this section were not met in this case where an employer would not have challenged a valid exercise of the right to a one-time change of physician, and there was no evidence to show that the claimant made a claim for any specific medical benefit with any of her authorized doctors. Foster v. Tyson Poultry, Inc., 2013 Ark. App. 172, — S.W.3d — (2013).

11-9-518. Weekly wages as basis for compensation.

CASE NOTES

Exceptional Circumstances.

Determination of a workers' compensation claimant's average weekly wage (AWW) based on exceptional circumstances under subsection (c) of this section was supported by substantial evidence where the claimant's business expenses were deducted from his gross receipts; it was not the function of the appellate court to conclude whether there was an alternative way to compute the AWW. No Way Pulpwood, Inc. v. McCarter, 2012 Ark. App. 506, — S.W.3d — (2012).

11-9-519. Compensation for disability — Total disability.

CASE NOTES

Analysis

Disability.
—Permanent.
Evidence.

Disability.

Denial of claim for permanent and total disability and an assignment of 25-percent loss in wage-earning capacity was supported by substantial evidence, because the functional capacity evaluation and vocational evaluation both indicated that the employee was capable of performing sedentary and light work; there was no evidence that the employee could not find employment in or successfully perform any of the types of jobs listed in his vocational evaluation, not least of all since the employee never attempted to look for or apply for any job after his injury. Rendell v. Ark. Children's Hosp., 2012 Ark. App. 539, — S.W.3d — (2012).

Benefits claimant failed to prove that she was permanently and totally disabled under subdivision (e)(1) of this section where a neurosurgeon concluded that the claimant was able to work with restrictions, and a vocational-rehabilitation expert agreed based on the neurosurgeon's opinion and the results of a functional capacity evaluation. Little weight was given to another doctor's opinion that the claimant was unable to work because she relied on subjective and generalized information. Gibson v. Wal-Mart Assocs., 2012 Ark. App. 560, — S.W.3d — (2012).

—Permanent.

Court affirmed the decision of the Arkansas Workers' Compensation Commission that appellee met his burden of proving entitlement to permanent and total disability benefits under subdivision (e)(1) of this section because substantial evidence supported the Commission's finding that appellee was permanently and totally disabled. Appellee clearly could not perform the strenuous kinds of jobs he held prior to his injury, and the Commission accepted his testimony that he was unable to perform sedentary work. Am. Eagle Airlines & Specialty Risk Servs. v. Berndt, 2013 Ark. App. 230, — S.W.3d — (2013).

Evidence.

Arkansas Workers' Compensation Commission did not err under subdivision (e)(1) of this section in holding that an employee was not entitled to permanent total disability benefits for a spine injury; the employee had not made any effort to pursue vocational rehabilitation in order to go back to work, and the employee was still capable of participating in retail shopping and other daily activities. Efird v. Whelan Sec., Inc., 2012 Ark. App. 548, — S.W.3d — (2012).

11-9-521. Compensation for disability — Scheduled permanent injuries.

CASE NOTES

Temporary Total Disability.

Benefits claimant was not entitled to additional temporary total disability benefits under subsection (a) of this section because the evidence did not support an argument that the claimant was still in a healing period two years after her original compensable injuries or that she had reentered a healing period; the claimant reached maximum medical improvement by August 6, 2010, and her continued complaints were too diffuse and unsupported by corroborating clinical findings to suggest otherwise. By the time the claimant sought unauthorized treatment, her residual symptoms were attributed to de Quervain's Tenosynovitis, which could not have been pinpointed to a particular cause, the claimant's own testimony supporting the finding that she had reached the end of her healing period for her left upper extremity, and the claimant abandoned her light-duty employment for reasons unrelated to her compensable hand

injuries. Foster v. Tyson Poultry, Inc., 2013 Ark. App. 172, — S.W.3d — (2013).

11-9-522. Compensation for disability — Unscheduled permanent partial disability.

CASE NOTES

Analysis

Earning Capacity.
Offer of Employment.
Percentage of Impairment.
Preclusion of Wage Loss Claim.
Wage Earning Loss.

Earning Capacity.

Determination that the claimant was disqualified from receiving wage loss benefits was proper, because the claimant was not entitled to permanent-partial disability benefits in excess of his one-percent permanent physical impairment, when under this section, the claimant was terminated from his job due to his own misconduct in connection with the job. Meadows v. Tyson Foods, Inc., 2013 Ark. App. 182, — S.W.3d — (2013).

Former school teacher, age 59, whose back injury prevented him from working full days but who was unable to find part time work, was entitled to an increased disability rating and permanent disability based on the wage-loss factor, pursuant to this section. The ALJ's opinion specifically referenced consideration of appellee's age, education, experience, and motivation to return to work. Gravette Sch. Dist. v. Harmon, 2013 Ark. App. 266, — S.W.3d — (2013).

Offer of Employment.

In a workers' compensation case, a finding that an employer did not make a bona fide job offer to a benefits claimant under subdivision (c)(1) of this section precluding her from obtaining wage-loss disability was supported by substantial evidence because a greeter job was beyond the claimant's physical limitations, according to the description of the job and the claimant's experience in working in that precise position; the employer failed to carry its burden of proof relating to the legitimacy and limitations of the alleged "greeter" position. Wal-Mart Assocs. v. Keys, 2012 Ark. App. 559, — S.W.3d — (2012).

Percentage of Impairment.

In a workers' compensation case, substantial evidence supported a four-percent impairment rating for a compensable right shoulder injury under subdivision (g)(1)(A) of this section based on the testimony of a treating physician; the Arkansas Workers' Compensation Commission was not required to award an impairment rating recommended by the American Medical Association Guides to the Evaluation of Permanent Impairment (4th ed. 1993). Greene v. Cockram Concrete Co., 2012 Ark. App. 691, — S.W.3d —, 2012 Ark. App. LEXIS 815 (Dec. 12, 2012).

Preclusion of Wage Loss Claim.

Employee was properly denied wage-loss disability benefits under subdivision (b)(1) of this section after the employee slipped and fell while cleaning floors because the employee failed to prove that the employe suffered a permanent anatomical impairment. Drake v. Sheridan Sch. Dist., 2013 Ark. App. 150, — S.W.3d — (2013).

Wage Earning Loss.

Twenty-five percent wage loss benefit was appropriate because the Arkansas Workers' Compensation Commission properly considered under subdivision (b)(1) of this section that the employee would be able to pursue gainful employment, even with his permanent physical limitations, based on his work experience and above-average intelligence. Cooper Tire & Rubber Co. v. Leach, 2012 Ark. App. 462, — S.W.3d — (2012).

In a workers' compensation case, a finding of a 25 percent wage-loss disability was supported by substantial evidence where the claimant's age, education, work experience, attitude and motivation, permanent anatomical impairment, and permanent physical limitations were considered; the claimant only had an 8th grade education, she was 60 years old, she continued to have pain and lifting and stand-

ing restrictions, and she had no marketable skills. Wal-Mart Assocs. v. Keys, 2012 Ark. App. 559, — S.W.3d — (2012).

Subchapter 7 — Proceedings Before Workers' Compensation Commission

11-9-702. Filing of claims.

CASE NOTES

Statute of Limitations.

Company was entitled to a writ of prohibition, because the lung disease and silicosis claim was covered by the Arkansas Workers' Compensation Act, and the circuit court lacked jurisdiction to determine whether the claimant's alleged disease from his exposure at home was covered under the Act; the time of disablement was within three years of his last injurious exposure, and the claimant failed to file his claim within the one-year limitation period. Porocel Corp. v. Circuit Court of Saline County, 2013 Ark. 172, — S.W.3d — (2013).

11-9-704. Proceedings on claims.

CASE NOTES

Evidence.

In a workers' compensation case, substantial evidence supported a four-percent impairment rating for a compensable right shoulder injury under § 11-9-522(g)(1)(A) based on the testimony of a treating physician; the Arkansas Workers' Compensation Commission was not required to award an impairment rating recommended by the American Medical Association Guides to the Evaluation of Permanent Impairment (4th ed. 1993). Greene v. Cockram Concrete Co., 2012 Ark. App. 691, — S.W.3d —, 2012 Ark. App. LEXIS 815 (Dec. 12, 2012).

Cited: Davis v. Action Mech., 2012 Ark. App. 515, — S.W.3d — (2012); Lambert v. LQ Mgmt., L.L.C., 2013 Ark. 114, — S.W.3d — (2013).

11-9-714. Costs in proceedings brought without reasonable grounds.

CASE NOTES

Costs Imposed.

Workers' Compensation Commission found that the claim was brought without reasonable grounds and was not well-grounded, and appellant did not argue why costs and fees were not to be imposed; furthermore, the finding that appellant violated this section and § 11-9-717 was supported by substantial evidence, as appellant was repeatedly advised to research his claim, and appellees said they would seek sanctions, but still appellant proceeded with a claim that lacked merit, and thus the court affirmed. Johnson v. United States Food Serv., 2013 Ark. App. 86, — S.W.3d — (2013).

11-9-715. Fees for legal services.

CASE NOTES

Analysis

Appeal.
Second Injury Fund.

Appeal.

Because an appellate court upheld the Arkansas Workers' Compensation Commission's denial of additional medical benefits to an employee, it also upheld its denial of attorney fees to the employee. Towler v. Tyson Poultry, Inc., 2012 Ark. App. 546, — S.W.3d — (2012).

Second Injury Fund.

Strictly construing this section and § 11-9-716, it is clear that an award of lump-sum attorney's fees is not limited to employers. Therefore, the Arkansas Workers' Compensation Commission had the authority to award a lump-sum attorney fee payable by a second injury fund under § 11-9-716, and an appellate court declined to overrule the decision in Lewis v. Auto Parts & Tire Co., Inc., 104 Ark. App. 230, 290 S.W.3d 37, 2008 Ark. App. LEXIS 867 (2008); moreover, further findings of fact were not necessary. Davis v. Action Mech., 2012 Ark. App. 515, — S.W.3d — (2012).

11-9-716. Lump-sum attorney's fees.

CASE NOTES

Analysis

Construction.
Second Injury Fund.

Construction.

Plain language of this section authorizes the Arkansas Workers' Compensation Commission to award lump sum attorneys' fees. No limitations are set forth because none were apparently intended. Davis v. Action Mech., 2012 Ark. App. 515, — S.W.3d — (2012).

Second Injury Fund.

Strictly construing § 11-9-715 and this section, it is clear that an award of lump-sum attorney's fees is not limited to employers. Therefore, the Arkansas Workers' Compensation Commission had the authority to award a lump-sum attorney fee payable by a second injury fund under this section, and an appellate court declined to overrule the decision in Lewis v. Auto Parts & Tire Co., Inc., 104 Ark. App. 230, 290 S.W.3d 37, 2008 Ark. App. LEXIS 867 (2008); moreover, further findings of fact were not necessary. Davis v. Action Mech., 2012 Ark. App. 515, — S.W.3d — (2012).

11-9-717. Attorney's signature.

CASE NOTES

Costs Imposed.

Workers' Compensation Commission found that the claim was brought without reasonable grounds and was not well-grounded, and appellant did not argue why costs and fees were not to be imposed; furthermore, the finding that appellant violated § 11-9-714 and this section was supported by substantial evidence, as appellant was repeatedly advised to research his claim, and appellees said they would seek sanctions, but still appellant proceeded with a claim that lacked merit, and thus the court affirmed. Johnson v. United States Food Serv., 2013 Ark. App. 86, — S.W.3d — (2013).

Subchapter 8 — Payment

11-9-804. Lump-sum settlement.

CASE NOTES

Cited: Davis v. Action Mech., 2012 Ark. App. 515, — S.W.3d — (2012).

11-9-807. Credit for compensation or wages paid.

CASE NOTES

Vacation.

"Full wages" under subsection (b) of this section refers to the money rate paid to recompense services rendered, and vacation pay is that sum received as an employee benefit when no services are rendered. Therefore, in a workers' compensation case, a benefits claimant was entitled to receive temporary-total disability benefits because he did not receive his full wages during his period of disability where he received vacation pay; vacation pay was the sum received as an employee benefit when no services were rendered. St. Edward Mercy Med. Ctr. v. Howard, 2012 Ark. App. 673, — S.W.3d —, 2012 Ark. App. LEXIS 790 (Nov. 28, 2012).

Subchapter 10 — Revision of Workers' Compensation Laws

11-9-1001. Legislative declaration.

CASE NOTES

Common-law Remedies for Retaliation.

By enacting § 16-118-107, the Arkansas General Assembly did not intend to revive the individual cause of action for common-law remedies for retaliation under Arkansas workers' compensation law which it expressly annulled at § 11-9-107. Lambert v. LQ Mgmt., L.L.C., 2013 Ark. 114, — S.W.3d — (2013).

CHAPTER 10

DEPARTMENT OF WORKFORCE SERVICES LAW

SUBCHAPTER.

Subchapter 2 — Definitions

SECTION.

Effective Dates. Acts 2013, No. 1180, § 2: Apr. 12, 2013. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that ElderChoices clients are among the state's most vulnerable citizens; that ElderChoices personal services caregivers provide essential assistance to ElderChoices clients to help them remain healthy and to keep them in their homes and out of institutions; that personal care services caregivers for ElderChoices clients are jeopardized by recent decisions by the Department of Workforce Services regarding the employment status of personal care services caregivers. Therefore, an emergency is declared to exist, and this act being immediately necessary for the preservation of the public peace, health, and safety shall become effective on: (1) The date of its approval by the Governor; (2) If the bill is neither approved nor vetoed by the Governor, the expiration of the period of time during which the Governor may veto the bill; or (3) If the bill is vetoed by the Governor and the veto is overridden, the date the last house overrides the veto."

11-10-210. Employment.

(a) As used in this chapter, unless the context clearly requires otherwise, "employment" means:

(1) Service performed after December 31, 1977, including service in interstate commerce, by:

(A) Any officer of a corporation;

(B) Any individual who, under the usual common law rules applicable in determining the employer-employee relationship, has the status of an employee; or

(C) Any individual other than an individual who is an employee under subdivision (a)(1)(A) or (B) of this section who performs services for remuneration for any person:

(i) As an agent-driver or commission-driver engaged in distributing meat products, vegetable products, fruit products, bakery products, beverages other than milk, or laundry or dry-cleaning services, for his or her principal; or

(ii) As a traveling or city salesman, other than as an agent-driver or commission-driver, engaged upon a full-time basis in the solicitation on behalf of, and the transmission to, his or her principal, except for sideline sales activities on behalf of some other person, of orders from wholesalers, retailers, contractors, or operators of hotels, restaurants, or other similar establishments for merchandise for resale or supplies for use in their business operations;

(iii) Provided that for purposes of subdivision (a)(1)(C) of this section, the term "employment" shall include services described in subdivisions (a)(1)(C)(i) and (ii) of this section only if:

(a) The contract of service contemplates that substantially all of the services are to be performed personally by the individual;

(b) The individual does not have a substantial investment in facilities used in connection with the performance of the services, other than in facilities for transportation; and

(c) The services are not in the nature of a single transaction that is not part of a continuing relationship with the person for whom the services are performed;

(2) Service performed:

(A) By an individual in the employ of this state or any of its instrumentalities, or in the employ of this state and one (1) or more states or their instrumentalities; and

(B) In the employ of any political subdivision of this state or any instrumentality of any one (1) or more of the political subdivisions, or any instrumentality of this state or any of its political subdivisions and one (1) or more other states or political subdivisions. Provided that the service is excluded from "employment" as defined in the Federal Unemployment Tax Act by § 3306(c)(7) of that act and is not excluded from "employment" under subdivision (a)(4) of this section;

(3) Service performed by an individual in the employ of a religious, charitable, educational, or other organization described in section 501(c)(3) of the Internal Revenue Code of 1954 if the organization had one (1) or more individuals in employment for some portion of a day in each of ten (10) different days, whether or not the days were consecutive, within the current or preceding calendar year irrespective of whether the same individuals are or were employed in each day;

(4) For the purposes of subdivisions (a)(2) and (3) of this section, the term "employment" does not apply to service performed:

(A) In the employ of:

(i) A church or convention or association of churches; or

(ii) An organization that is operated primarily for religious purposes and that is operated, supervised, controlled, or principally supported by a church or convention or association of churches;

(B) By a duly ordained, commissioned, or licensed minister of a church in the exercise of his or her ministry or by a member of a religious order in the exercise of duties required by the order;

(C) In the employ of a governmental entity referred to in subdivision (a)(2) of this section if the service is performed by an individual in the exercise of duties:

(i) As an elected official;

(ii) As a member of a legislative body or a member of the judiciary of a state or political subdivision;

(iii) As a member of the Arkansas Army National Guard or the Arkansas Air National Guard;

(iv) In a position which under or pursuant to the laws of this state is designated as a major nontenured policymaking or advisory position or a policymaking or advisory position the performance of the duties of which ordinarily does not require more than eight (8) hours per week;

(v) During any calendar year beginning on and after January 1, 1999, as an election official or election worker if the amount of the remuneration received by the individual during the calendar year is less than one thousand dollars ($1,000);

(D) In a facility conducted for the purpose of carrying out a program of rehabilitation for individuals whose earning capacity is impaired by age or physical or mental deficiency or injury or for the purpose of providing remunerative work for individuals who because of their impaired physical or mental capacity cannot be readily absorbed into the competitive labor market, by an individual receiving the rehabilitation or remunerative work;

(E) As part of an unemployment work-relief or work-training program assisted or financed in whole or in part by any federal agency or an agency of a state or political subdivision thereof, by an individual receiving the work relief or work training;

(F) By an inmate of a custodial or penal institution; or

(G) Beginning on and after July 1, 1999, by a person committed to a penal institution;

(5) Service performed by an individual in agricultural labor as defined in subdivision (f)(1) of this section when:

(A) The service is performed for a person who:

(i) During any calendar quarter in either the current or the preceding calendar year paid remuneration in cash of twenty thousand dollars ($20,000) or more to individuals employed in agricultural labor; or

(ii) For some portion of a day in each of twenty (20) different calendar weeks, whether or not the weeks were consecutive, in either the current or preceding calendar year, employed in agricultural labor ten (10) or more individuals, regardless of whether they were employed at the same moment of time;

(B) For the purposes of this subdivision (a)(5), any individual who is a member of a crew furnished by a crew leader to perform service in agricultural labor for any other person shall be treated as an employee of the crew leader:

(i) If the crew leader holds a valid certificate of registration under the Migrant and Seasonal Agricultural Worker Protection Act of 1983 or substantially all the members of the crew operate or maintain tractors, mechanized harvesting or cropdusting equipment, or any other mechanized equipment, which is provided by the crew leader; and

(ii) If the individual is not an employee of the other person within the meaning of subdivision (a)(1) of this section;

(C) For the purposes of this subdivision (a)(5), in the case of any individual who is furnished by a crew leader to perform service in agricultural labor for any other person and who is not treated as an employee of that crew leader under subdivision (a)(5)(B) of this section:

(i) The other person and not the crew leader shall be treated as the employer of the individual; and

(ii) The other person shall be treated as having paid cash remuneration to the individual in an amount equal to the amount of cash remuneration paid to the individual by the crew leader, either on his

or her own behalf or on behalf of the other person, for the service in agricultural labor performed for the other person;

(D) For the purposes of this subdivision (a)(5), the term "crew leader" means an individual who:

(i) Furnishes individuals to perform service in agricultural labor for any other person;

(ii) Pays, either on his or her own behalf or on behalf of the other person, the individuals so furnished by him or her for the service in agricultural labor performed by them; and

(iii) Has not entered into a written agreement with the other person under which the individual is designated as an employee of the other person;

(6) Domestic service in a private home, local college club, or local chapter of a college fraternity or sorority if performed for an employing unit which paid cash remuneration of one thousand dollars ($1,000) or more to individuals employed in domestic service in any calendar quarter in the calendar year or the preceding calendar year;

(7) Service of an individual who is a citizen of the United States, performed outside the United States, except in Canada, or in the case of the Virgin Islands, in the employ of an American employer, other than service which is deemed employment under the provisions of subsections (b) and (c) of this section or the parallel provisions of another state's law, if:

(A) The employer's principal place of business in the United States is located in this state;

(B) The employer has no place of business in the United States, but:

(i) The employer is an individual who is a resident of this state;

(ii) The employer is a corporation which is organized under the laws of this state; or

(iii) The employer is a partnership or a trust and the number of partners or trustees who are residents of this state is greater than the number who are residents of any one (1) other state;

(C) None of the criteria of subdivision (a)(7)(A) or (B) of this section are met, but the employer has elected coverage in this state or, the employer having failed to elect coverage in any state, the individual has filed a claim for benefits, based on the service, under the law of this state; or

(D) An "American employer" for purposes of this section means a person who is:

(i) An individual who is a resident of the United States;

(ii) A partnership, if two-thirds (⅔) or more of the partners are residents of the United States;

(iii) A trust, if all of the trustees are residents of the United States; or

(iv) A corporation organized under the laws of the United States or of any state;

(8) Notwithstanding subsection (b) of this section, all service performed by an officer or member of the crew of an American vessel on or

in connection with the vessel if the operating office from which the operations of the vessel operating on navigable waters within or without the United States are ordinarily and regularly supervised, managed, directed, and controlled is within this state; and

(9) Notwithstanding any other provisions of this section, service with respect to which a tax is required to be paid under any federal law imposing a tax against which credit may be taken for contributions required to be paid into a state unemployment fund or which as a condition for full tax credit against the tax imposed by the Federal Unemployment Tax Act is required to be covered under this chapter.

(b) The term "employment" shall include an individual's entire service performed within or both within and without this state if the service is localized in this state. Service shall be deemed to be localized within a state if:

(1) The service is performed entirely within the state; or

(2) The service is performed both within and without the state but the service performed without the state is incidental to the individual's service within the state, for example, service that is temporary or transitory in nature or consists of isolated transactions.

(c) The term "employment" shall include an individual's entire service performed within, or both within and without, this state if the service is not localized in any state but some of the service is performed in this state and:

(1) The individual's base of operations is in this state; or

(2) If there is no base of operations, then the place from which the service is directed or controlled is in this state; or

(3) The individual's base of operations or place from which the service is directed or controlled is not in any state in which some part of the service is performed, but the individual's residence is in this state;

(4) The term "employment" shall also include an individual's service, wherever performed within the United States, the Virgin Islands, or Canada, if:

(A) Such service is not covered under the unemployment compensation law of any other state, the Virgin Islands, or Canada; and

(B) The place from which the service is directed or controlled is in this state.

(d) Service covered by an election pursuant to § 11-10-403 and service covered by an election duly approved by the Director of the Department of Workforce Services in accordance with an arrangement pursuant to § 11-10-544 shall be deemed to be employment during the effective period of the election.

(e) Service performed by an individual for wages shall be deemed to be employment subject to this chapter irrespective of whether the common law relationship of master and servant exists, unless and until it is shown to the satisfaction of the director that:

(1) Such individual has been and will continue to be free from control and direction in connection with the performance of the service, both under his or her contract for the performance of service and in fact;

(2) The service is performed either outside the usual course of the business for which the service is performed or is performed outside all the places of business of the enterprise for which the service is performed; and

(3) The individual is customarily engaged in an independently established trade, occupation, profession, or business of the same nature as that involved in the service performed.

(f) The term "employment" shall not include:

(1) Service performed by an individual in agricultural labor, except as provided in subdivision (a)(5) of this section. For purposes of this subdivision (f)(1), the term "agricultural labor" means any service performed which was agricultural labor as defined in this subsection prior to January 1, 1972, and remunerated service performed:

(A) On a farm, in the employ of any person, in connection with cultivating the soil, or in connection with raising or harvesting any agricultural or horticultural commodity, including the raising, shearing, feeding, caring for, training, and management of livestock, bees, poultry, and furbearing animals and wildlife;

(B) In the employ of the owner or tenant or other operator of a farm, in connection with the operation, management, conservation, improvement, or maintenance of the farm and its tools and equipment, or in salvaging timber or clearing land of brush and other debris left by a hurricane if the major part of the service is performed on a farm;

(C) In connection with the production or harvesting of any commodity defined as an agricultural commodity in section 15(g) of the Agricultural Marketing Act or in connection with the ginning of cotton, or in connection with the operation or maintenance of ditches, canals, reservoirs, waterways, not owned or operated for profit, used exclusively for supplying and storing water for farming purposes;

(D)(i) In the employ of the operator of a farm in handling, planting, drying, packing, packaging, freezing, grading, storing, or delivering to storage or to market or to a carrier for transportation to market, in its unmanufactured state, any agricultural or horticultural commodity, but only if the operator produced more than one-half (½) of the commodity with respect to which the service is performed.

(ii) In the employ of a group of operators of farms, or a cooperative organization of which the operators are members, in the performance of service described in subdivision (f)(1)(D)(i) of this section, but only if the operators produced more than one-half (½) of the commodity with respect to which the service is performed.

(iii) The provisions of subdivisions (f)(1)(D)(i) and (ii) of this section shall not be deemed to be applicable with respect to service performed in connection with commercial canning or commercial freezing or in connection with any agricultural or horticultural commodity after its delivery to a terminal market for distribution for consumption; or

(E) On a farm operated for profit if the service is not in the course of the employer's trade or business. As used in this subdivision (f)(1),

the term "farm" includes stock, dairy, poultry, fruit, furbearing animal, and truck farms, plantations, ranches, nurseries, ranges, greenhouses or other similar structures used primarily for the raising of agricultural or horticultural commodities, and orchards;

(2) Domestic service in a private home, local college club, or local chapter of a college fraternity or sorority unless performed for an employing unit that paid cash remuneration of one thousand dollars ($1,000) or more to individuals employed in domestic service in any calendar quarter in the calendar year or the preceding calendar year;

(3) Service not in the course of the employer's trade or business performed in any calendar quarter by an employee, unless the cash remuneration paid for the service is fifty dollars ($50.00) or more and the service is performed by an individual who is regularly employed by the employer to perform the service. For purposes of this section, an individual shall be deemed to be regularly employed by an employer during a calendar quarter only if:

(A) On each of some twenty-four (24) days during the quarter, the individual performs for the employer for some portion of the day service not in the course of the employer's trade or business; or

(B) The individual was regularly employed as determined under subdivision (f)(3)(A) of this section by the employer in the performance of the service during the preceding calendar quarter;

(4) Service performed on or in connection with a vessel or aircraft not an American vessel or American aircraft if the employee is employed on and in connection with the vessel or aircraft when outside the United States;

(5) Service performed by an individual in the employ of his or her son, daughter, or spouse, and service performed by a child under the age of twenty-one (21) years in the employ of his or her father or mother;

(6) Service performed in the employ of the United States Government or of an instrumentality of the United States which is:

(A) Wholly or partially owned by the United States; or

(B) Exempt from the tax imposed by section 3301 of the Federal Unemployment Tax Act by virtue of any provision of law which specifically refers to that section or the corresponding section of prior law in granting the exemption;

(7) Service performed in the employ of any political subdivision of the state or any instrumentality of any political subdivision which is wholly owned by one (1) or more political subdivisions of the state;

(8) Service performed by an individual for any political caucus, committee, headquarters, or other groups of like nature not established on a permanent basis;

(9) Service performed by an individual as an employee or employee representative as defined in section 1 of the Railroad Unemployment Insurance Act;

(10)(A) Service performed in any calendar quarter in the employ of any organization exempt from income tax under section 501(a) of the Internal Revenue Code of 1954, other than an organization described

in section 401(a) or under section 521 of the Internal Revenue Code of 1954 if the remuneration for the service is less than fifty dollars ($50.00);

(B) Service performed by an individual under the age of twenty-two (22) years who is enrolled at a nonprofit or public educational institution which normally maintains a regular faculty and curriculum and normally has a regularly organized body of students in attendance at the place where its educational activities are carried on as a student in a full-time program, taken for credit at the institution, which combines academic instruction with work experience, if the service is an integral part of the program and the institution has so certified to the employer, except that this subdivision shall not apply to service performed in a program established for or on behalf of an employer or group of employers;

(C) Service performed in the employ of a school, college, or university if the service is performed by a student who is enrolled and is regularly attending classes at the school, college, or university; or

(D) Service performed in the employ of a hospital if the service is performed by a patient of the hospital as defined in § 11-10-221;

(11) Service performed in the employ of a foreign government, including service as a consular or other officer or employee or a nondiplomatic representative;

(12) Service performed in the employ of an instrumentality wholly owned by a foreign government:

(A) If the service is of a character similar to that performed in foreign countries by employees of the United States Government or of an instrumentality thereof; and

(B) If the United States Secretary of State shall certify to the United States Secretary of the Treasury that the foreign government, with respect to whose instrumentality exemption is claimed, grants an equivalent exemption with respect to similar service performed in the foreign country by employees of the United States Government and of instrumentalities thereof;

(13) Service performed as a student nurse in the employ of a hospital or a nurses' training school by an individual who is enrolled and is regularly attending classes in a nurses' training school chartered or approved pursuant to state law and service performed as an intern in the employ of a hospital by an individual who has completed a four-year course in a medical school chartered or approved pursuant to state law;

(14) Service performed by an individual for any person or employing unit as an insurance agent or as an insurance solicitor if all service performed by the individual for the person or employing unit is performed for remuneration solely by way of commission;

(15) Any service performed by an individual for any person or employing unit as a real estate agent or as a real estate solicitor or salesman if all service performed by the individual for the person or employing unit is performed for remuneration solely by way of commission;

(16)(A) Service performed by an individual in the delivery or distribution of newspapers or shopping news, not including delivery or distribution to any point for subsequent delivery or distribution, provided that the service does not constitute employment performed by an employee under the Federal Unemployment Tax Act;

(B) Service performed by an individual in, and at the time of, the sale of newspapers or magazines to ultimate consumers, under an arrangement under which the newspapers or magazines are to be sold by him or her at a fixed price, his or her compensation being based on the retention of the excess of the price over the amount at which the newspapers or magazines are charged to him or her, whether or not he or she is guaranteed a minimum amount of compensation for the service or is entitled to be credited with the unsold newspapers or magazines turned back;

(17) Service performed in the employ of an international organization;

(18) Service performed by an individual in or as an officer or member of the crew of a vessel while it is engaged in the catching, taking, harvesting, cultivating, or farming of any kind of fish, shellfish, crustacea, sponges, seaweed, or other aquatic forms of animal and vegetable life, including service performed by any such individual as an ordinary incident to any such activity, except:

(A) Service performed in connection with the catching or taking of salmon or halibut for commercial purposes; and

(B) Service performed on or in connection with a vessel of more than ten (10) net tons, determined in the manner provided for determining the register tonnage of merchant vessels under the laws of the United States;

(19) Service that is performed by a nonresident alien individual for the period that he or she is temporarily present in the United States as a nonimmigrant under subparagraph (F) or (J) of section 101(a)(15) of the Immigration and Nationality Act and which is performed to carry out the purpose specified in subparagraph (F) or (J), as the case may be;

(20) Service performed by a person committed to a penal institution; or

(21)(A) Services performed as personal care services for a certified ElderChoices Provider licensed under § 20-10-2301 et seq. unless the provider is a state or local government entity or federally recognized Indian tribe as described in 26 U.S.C § 3306(c)(7) or a nonprofit organization as described in 26 U.S.C § 3309(a)(1).

(B) Subdivision (f)(21)(A) of this section is retroactive to January 1, 2010.

(g) If the services performed during one-half (½) or more of any pay period by an individual for any person or employing unit employing him or her constitute employment, all the services of the individual for the period shall be deemed to be employment, but if the services performed during more than one-half (½) of any pay period by an individual for any person or employing unit employing him or her do not constitute

employment, then none of the services of the individual for the period shall be deemed to be employment. As used in this section, the term "pay period" means a period of not more than thirty-one (31) consecutive days for which a payment or remuneration is ordinarily made to the individual by any person or employing unit employing him or her.

History. Acts 1941, No. 391, § 2; 1943, No. 110, § 1; 1947, No. 398, § 1; 1949, No. 129, § 1; 1949, No. 155, § 2; 1955, No. 395, §§ 2, 3; 1963, No. 93, § 1; 1963, No. 104, § 1; 1965, No. 551, § 1; 1971, No. 35, § 3; 1973, No. 65, § 1; 1973, No. 329, §§ 2, 3, 4, 12; 1975, No. 609, § 1; 1975 (Extended Sess., 1976), No. 1083, §§ 2, 3; 1977, No. 376, §§ 3, 4; 1979, No. 492, §§ 1-3; 1979, No. 922, §§ 1-3; 1983, No. 482, §§ 1-3; 1985, No. 8, § 1; 1985, No. 9, § 1; A.S.A. 1947, § 81-1103; reen. Acts 1987, No. 672, § 2; Acts 1987, No. 753, § 1; 1995, No. 581, § 1; 1997, No. 234, § 4; 1999, No. 1116, §§ 3-5; 2003, No. 1223, § 1; 2013, No. 1180, § 1.

Amendments. The 2013 amendment added (f)(21).

Subchapter 5 — Benefits Generally

Effective Dates. Acts 2013, No. 956, § 10: Emergency clause failed to pass. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that the Department of Workforce Services must ensure the prompt determination of claims for unemployment insurance benefits; that the state's unemployment insurance program must remain in conformity with federal law requirements; and that this act is immediately necessary because a delay would interfere with continued provision of benefits and services to eligible persons. Therefore, an emergency is declared to exist, and this act being necessary for the preservation of the public peace, health, and safety shall become effective on July 1, 2013."

11-10-513. Disqualification — Voluntarily leaving work.

CASE NOTES

Analysis

Good Cause.
Preservation of Job Rights.
Voluntary Leaving Shown.

Good Cause.

Arkansas Board of Review erred in denying unemployment benefits, because reasonable minds could not conclude, on the basis of the facts actually found by the Board, that an employee lacked good cause connected with the work for terminating his employment when the employee was not being compensated; the employee did not allege a substantial decrease, but rather no compensation at all, and the Board made a specific finding that

the employee showed he continued to work for several weeks without pay. Ballard v. Dir., 2012 Ark. App. 371, — S.W.3d — (2012).

Arkansas Board of Review erred under subdivision (a)(1) of this section in denying a claimant unemployment benefits based on a finding that she quit her previous employment as a dental assistant voluntarily and without good cause because the employer admitted that he continued making inappropriate sexual remarks regarding the claimant in front of patients. Pepper v. Dir., Dep't of Workforce Servs., 2012 Ark. App. 605, — S.W.3d — (2012).

Preservation of Job Rights.

Under subdivision (a)(1) of this section, appellant was not entitled to unemployment benefits as she left her last employment without making reasonable efforts to preserve her job rights because she did not provide her employer with her release to return to work, and because she did specifically ask, and only assumed, she had been fired. Foster v. Dir., Dep't of Workforce Servs., 2013 Ark. App. 190, — S.W.3d — (2013).

Arkansas Board of Review's denial of unemployment benefits to appellant was reversed because substantial evidence did not support the Board's finding that appellant voluntarily left her job due to a disability and failed to make any reasonable efforts to preserve her job rights before quitting under subdivisions (a)(1) and (b)(2)(A) of this section, as appellant did take active steps to preserve her job rights by requesting a transfer to another position that could accommodate her disability. Alexander v. Dir., Dep't of Workforce Servs., 2013 Ark. App. 225, — S.W.3d — (2013).

Voluntary Leaving Shown.

Board of Review's decision denying appellant unemployment benefits under this section on the basis that he voluntarily left his job as a carpenter without good cause connected to the work was supported by substantial evidence, because appellant made no attempt to go to his supervisor's house to report for work when he had not been contacted by telephone. Rivas v. Dir., 2013 Ark. App. 91, — S.W.3d — (2013).

11-10-514. Disqualification — Discharge for misconduct.

(a)(1) If so found by the Director of the Department of Workforce Services, an individual shall be disqualified for benefits if he or she is discharged from his or her last work for misconduct in connection with the work.

(2) In cases of discharge for absenteeism, the individual shall be disqualified for misconduct in connection with the work if the discharge was pursuant to the terms of a bona fide written attendance policy with progressive warnings, regardless of whether the policy is a fault or no-fault policy.

(3)(A) Misconduct in connection with the work includes the violation of any behavioral policies of the employer as distinguished from deficiencies in meeting production standards or accomplishing job duties, and

(B) Without limitation:

(i) Disregard of an established bona fide written rule known to the employee; or

(ii) A willful disregard of the employer's interest.

(4)(A) Misconduct in connection with the work shall not be found for instances of poor performance unless the employer can prove that the poor performance was intentional.

(B) An individual's repeated act of commission, omission, or negligence despite progressive discipline constitutes sufficient proof of intentional poor performance.

(C) An individual who refuses an alternate suitable job rather than being terminated for poor performance shall be considered discharged for misconduct in connection with the work.

(5) The disqualification under this subsection (a) shall continue until, subsequent to filing a claim, the individual has had at least thirty (30) days of employment covered by an unemployment compensation law of this state, another state, or the United States.

(b)(1) If an individual is discharged from his or her last work for misconduct in connection with the work on account of dishonesty, drinking on the job, reporting for work while under the influence of intoxicants, including a controlled substance, or willful violation of bona fide written rules or customs of the employer including those pertaining to his or her safety or the safety of fellow employees, persons, or company property, harassment, unprofessional conduct, or insubordination, he or she shall be disqualified until, subsequent to the date of the disqualification, the individual has been paid wages in two (2) quarters for insured work totaling not less than thirty-five (35) times his or her weekly benefit amount.

(2)(A) If an individual is discharged for testing positive for an illegal drug pursuant to a United States Department of Transportation-qualified drug screen conducted in accordance with the employer's bona fide written drug policy, the individual is disqualified:

(i) Until, subsequent to the date of the disqualification, the claimant has been paid wages in two (2) quarters for insured work totaling not less than thirty-five (35) times his or her weekly benefit amount; and

(ii) Until he or she passes a United States Department of Transportation-qualified drug screen by testing negative for illegal drugs.

(B) If an individual is disqualified under subdivision (b)(2)(A) of this section, a benefit paid to the individual with respect to any week of unemployment after the discharge shall not be charged to the account of the employer that discharged the individual if the benefit is based upon wages paid to the individual for employment before the discharge by the employer that discharged the individual.

(c)(1) If so found by the director, an individual shall be disqualified for benefits if he or she is suspended from his or her last work for misconduct in connection with the work.

(2) Except as otherwise provided, the disqualification shall be for the duration of the suspension or eight (8) weeks, whichever is the lesser.

History. Acts 1941, No. 391, § 5; 1943, No. 138, § 30; 1947, No. 398, § 4; 1949, No. 155, § 5; 1953, No. 162, § 3; 1955, No. 395, §§ 11, 12; 1971, No. 35, § 9; 1983, No. 482, § 17; A.S.A. 1947, § 81-1106; Acts 1987, No. 753, § 14; 1989 (3rd Ex. Sess.), No. 95, § 1; 1993, No. 6, § 7; 1999, No. 1116, § 11; 2001, No. 770, § 1; 2007, No. 454, § 1; 2009, No. 802, § 5; 2011, No. 861, § 4; 2011, No. 1040, § 2; 2013, No. 956, § 1; 2013, No. 1077, §§ 1-3.

Amendments. The 2013 amendment

by No. 956 inserted "for misconduct in connection with the work" in present (a)(2); substituted "(b)(2)(A)" for "(c)(2)(A)" in present (c)(2)(B); inserted present (a)(3) through (a)(5); deleted former (a)(3) and (d); and redesignated former (a)(2)(A) and (a)(2)(B) as present (a)(2) and (b) and redesignated the remaining subdivisions accordingly.

The 2013 amendment by No. 1077 deleted "with progressive warnings" following "attendance policy" in (a)(2)(A); added the (i) designation in (a)(3)(C) and added (a)(3)(C)(ii); and, in (b)(1), inserted "written" following "bona fide," "including those" preceding "pertaining to" and "harassment, unprofessional conduct, or insubordination."

CASE NOTES

Analysis

Misconduct.
—Absenteeism.
—Quality of Work Product.
Substantial Evidence.

Misconduct.

Denial of unemployment benefits based on misconduct was supported by substantial evidence, because the testimony from the employer's director of asset protection was sufficient evidence of misconduct, as he was well aware of the ethics investigation findings, and an ethics investigation team received evidence of the employee's misconduct from three sources; neither the appeal tribunal nor the review board was bound by common law or statutory rules of evidence. Blaylock v. Dir., Dep't of Workforce Servs. & Wal-Mart, 2012 Ark. App. 538, — S.W.3d — (2012).

Employer purportedly told appellant on three occasions to return to work, and, according to the employer, appellant told the employer to shut up and that he did not have the guts to run his own business. If believed, this was willful conduct, and it showed a disregard of the standard of behavior an employer has the right to expect from an employee. Valentine v. Dir., Dep't of Workforce Servs., 2012 Ark. App. 612, — S.W.3d —, 2012 Ark. App. LEXIS 731 (Oct. 31, 2012).

Employee who was terminated for failing to follow an alleged safety policy was entitled to recover unemployment compensation despite the employer's contention that he was terminated for misconduct for failing to report a forklift accident; the employer's witness could not verify the existence or extent of any such safety policy or procedure. Cochran v. Dir., Dep't of Workforce Serv.s, 2013 Ark. App. 72, — S.W.3d — (2013).

Arkansas Board of Review did not err in upholding a decision that an employee was not eligible for unemployment benefits under subsection (b) of this section on the ground that the employee was discharged for misconduct because the Board made a factual finding that the weight of the evidence showed that the employee was fired for falsifying documentation. Barnard v. Dir., Dep't of Workforce Servs., 2013 Ark. App. 143, — S.W.3d — (2013).

Arkansas Board of Review did not err in finding that an employee was ineligible for unemployment benefits due to misconduct under subdivision (a)(1) of this section because when confronted by a manager, he lied about the existence of a romantic relationship with a coworker, which was in violation of company policy, and it was his dishonesty that resulted in his termination. Crisp v. Dir., Dep't of Workforce Servs., 2013 Ark. App. 219, — S.W.3d — (2013).

—Absenteeism.

Court reversed a decision of the Arkansas Board of Review denying appellant unemployment benefits because substantial evidence did not support the Board's finding that appellant's absences constituted a willful disregard of the employer's best interests. The employer allowed its employees to accumulate up to nine points without the risk of losing their jobs, and appellant was discharged when a vacation day was "inadvertently" counted against him, resulting in an accumulation of nine points in a year. The evidence showed that appellant's actual absentee/tardiness points fell within the range allowed by the employer. Preston v. Dir., 2013 Ark. App. 191, — S.W.3d — (2013).

—Quality of Work Product.

Court reversed the Board of Review's decision to deny appellant unemployment

benefits because substantial evidence did not support the Board's conclusion that appellant was fired for misconduct under subsection (a) of this section as the record showed that appellant was discharged for purely economic reasons. Failing to be a productive salesman was not misconduct. An element of intent was required, and the Board erred in concluding that appellant had intentionally or willfully underperformed. Warren v. Dir., 2013 Ark. App. 178, — S.W.3d — (2013).

Substantial Evidence.

Arkansas Board of Review's denial of an employee's application for unemployment benefits was supported by substantial evidence because the employee's intentional violations of the employer's safety rules constituted misconduct within the meaning of subsection (b) of this section for which the employee could be discharged. Hoy v. Williams, 2012 Ark. App. 465, — S.W.3d — (2012).

Review board could have reasonably reached its decision that the employee was discharged for reasons other than misconduct, and thus the decision was supported by substantial evidence, given that (1) on the days the employee became emotional at work, she had been responding to the fact that her car had been broken into or mourning the anniversary of her husband's death, (2) the board could have found that the employee's actions, including using her cell phone, was not an intentional disregard of the employer's best interest, (3) it was a fair inference that the employer did not present much specific information about how the employee's behavior had an effect on the work place, and (4) whether or not the employee's behavior adversely affected the work place, her behavior did not amount to misconduct that was connected with the work. King v. Dir., 2013 Ark. App. 97, — S.W.3d — (2013).

Review board affirmed the appeal tribunal decision that found the employee was discharged for reasons other than misconduct under subdivision (a)(1) of this section, but the employer asked the court to apply the wrong standard of review on appeal; the court did not determine if a contrary finding by the board would have been supported by substantial evidence, but whether substantial evidence supported the findings that the board made, and the court would affirm if the board could reasonably have reached the decision it made, even if there was evidence upon which a different decision could have been reached. King v. Dir., 2013 Ark. App. 97, — S.W.3d — (2013).

11-10-519. Disqualification — Penalty for false statement or misrepresentation.

(a) If so found by the Director of the Department of Workforce Services, an individual shall be disqualified for benefits:

(1) If he or she willfully makes a false statement or misrepresentation of a material fact or willfully fails to disclose a material fact in filing an initial claim or a claim renewal, he or she shall be disqualified from the date of filing the claim until he or she has ten (10) weeks of employment in each of which he or she has earned wages equal to at least his or her weekly benefit amount;

(2)(A) For any continued week claimed with respect to which the employee has willfully made a false statement or misrepresentation of a material fact or willfully fails to disclose a material fact in obtaining or attempting to obtain any benefits, and for an additional thirteen (13) weeks of unemployment, as defined in § 11-10-512, and which shall commence with Sunday of the first week with respect to which a claim is filed commencing with the week of delivery or mailing of the determination of disqualification under this section.

(B)(i) In addition to the thirteen (13) weeks of disqualification, a disqualification of three (3) weeks shall be imposed for each week of failure or falsification.

(ii)*(a)* Any weekly benefits payable subsequent to the date of delivery or mailing of the determination shall be terminated.

(b) The termination shall apply only to benefits payable within the benefit year of the claim with respect to which the claimant willfully made a false statement or misrepresentation; and

(3) The disqualification shall not be applied after two and one-half (2½) years have elapsed from the date of delivery or mailing of the determination of disqualification under this section, but all overpayments established by the determination of disqualification shall be collected as otherwise provided by this chapter.

(b) Upon request of the Legislative Council, the Department of Workforce Services shall provide reports regarding unemployment insurance claim fraud and its efforts to prevent the fraud.

History. Acts 1941, No. 391, § 5; 1949, No. 155, § 5; 1955, No. 395, § 19; 1963, No. 93, § 6; 1971, No. 35, § 9; 1983, No. 482, § 21; A.S.A. 1947, § 81-1106; Acts 2001, No. 1367, § 7; 2003, No. 1223, § 7; 2013, No. 1242, § 1.

Amendments. The 2013 amendment substituted "claim renewal, he or she shall" for "claim renewal. He or she shall" in (a)(1); redesignated former (2)(B) as present (a)(2)(B)(i) and (a)(2)(B)(ii); in (a)(2)(B)(ii)(*a*), inserted "of" following "mailing" and substituted "terminated" for "reduced fifty percent (50%) rounded to the next lower dollar, and the remainder of maximum benefits shall be reduced accordingly"; substituted "termination" for "reduction" in (a)(2)(B)(ii)(*b*); in (a)(3), substituted "two and one half (2½)" for "five (5)" and inserted "of" following "mailing"; and added (b).

11-10-524. Claims — Administrative appeal — Filing and hearing.

CASE NOTES

Failure to Appear.

Board of Review's determination that an unemployment compensation claimant failed to show good cause for not participating in a hearing under subdivision (d)(1)-(2) of this section was reversed; the claimant's attorney attempted to participate in the telephonic hearing but was prevented from doing so by technical difficulties not of her making. Sims v. Dir., 2013 Ark. App. 241, — S.W.3d — (2013).

11-10-529. Claims — Decision of Board of Review — Judicial review.

(a)(1)(A) Any party entitled to a decision of the Board of Review shall have thirty (30) calendar days from the date the decision is mailed to his or her last known address in which to request a judicial review by filing in the Court of Appeals a petition for review of the decision, and in the proceedings any other party to the proceeding before the board shall be made a party respondent.

(B)(i) If mailed, a petition for review shall be considered filed as of the date of the postmark on the envelope.

(ii) In the event of a nonexistent or illegible postmark, the office of the Clerk of the Court of Appeals shall notify the appellant by mail; and

(iii) The appellant shall then have ten (10) calendar days from the posted mailing date of the clerk's notification letter to provide the Court of Appeals proof of timely mailing of the request for judicial review by producing a delivery confirmation or a certified mail return receipt document bearing evidence of the accurate post date.

(2)(A) Upon the filing of a petition for review by the director or upon the service of the petition on him or her, the director shall forthwith send by mail to each of the parties to the proceeding a copy of the petition.

(B) The Director of the Department of Workforce Services is made a party to the proceedings.

(C) The petition shall be served upon the director by leaving with him or her, or such representative as he or she may designate for that purpose, as many copies of the petition as there are respondents.

(b)(1)(A) With his or her answer or petition, the director shall file with the court a certified copy of the record of the case, including all documents and papers and a transcript of all testimony taken in the matter, together with the board's findings, conclusions, and decision.

(B) The record shall be certified by the Chair of the Board of Review.

(2)(A) Upon the filing of a petition for review by the director or upon the service of the petition on him or her, the director shall forthwith send by mail to each of the parties to the proceeding a copy of the petition.

(B) The mailing shall be deemed to be completed service upon all such parties.

(c)(1) In any proceeding under §§ 11-10-523 — 11-10-530, the findings of the board as to the facts, if supported by evidence and in the absence of fraud, shall be conclusive and the jurisdiction of the court shall be confined to questions of law.

(2)(A) No additional evidence shall be received by the court, but the court may order additional evidence to be taken before the board.

(B) The board may, after hearing the additional evidence, modify its findings of fact or conclusions and file the additional or modified findings and conclusions, together with a certified transcript of the additional record, with the clerk of the court.

(d)(1) The proceedings shall be heard in a summary manner and shall be given precedence over all other civil cases except cases arising under the Workers' Compensation Law, § 11-9-101 et seq.

(2) It shall not be necessary as a condition precedent to judicial review of any decision of the board to enter exceptions to the rulings of the board.

(3) No bond shall be required as a condition of initiating a proceeding for judicial review or entering an appeal from the decision of the court upon the review.

History. Acts 1941, No. 391, § 6; 1943, No. 138, § 8; 1953, No. 162, § 10; 1979, No. 252, § 2; 1981, No. 43, § 9; 1983, No. 482, § 38; A.S.A. 1947, § 81-1107; Acts 1997, No. 234, § 20; 2003, No. 1223, § 11; 2013, No. 956, § 2.

Amendments. The 2013 amendment deleted "certified" preceding "mail" in (b)(2)(A).

11-10-532. Claims — Recovery.

(a)(1) If the Director of the Department of Workforce Services finds that a person knowingly has made a false statement or misrepresentation of a material fact or knowingly has failed to disclose a material fact and as a result of either action has received benefits under this chapter to which he or she was not entitled, then he or she is liable to repay the amount to the Unemployment Compensation Fund, or the director may recover the amount of the overpayment by deductions from any future benefits payable to the person under this chapter.

(2) Once the overpayment becomes final pursuant to § 11-10-527, the amount owed shall accrue interest at the rate of ten percent (10%) per annum beginning thirty (30) days after the date of the first billing statement.

(3) A penalty of fifteen percent (15%) of the amount of the overpayment at the time the overpayment becomes final shall be assessed on all fraudulent overpayments.

(b)(1) If the director finds that a person has received an amount as benefits under this chapter to which he or she was not entitled by reasons other than fraud, willful misrepresentation, or willful nondisclosure of facts, the person is liable to repay the amount to the Unemployment Compensation Fund.

(2) In lieu of requiring the repayment, the director may recover the amount by deduction of any future benefits payable to the person under this chapter unless the director finds that the overpayment was received without fault on the part of the recipient and that its recovery would be against equity and good conscience.

(c) A person held liable to repay an amount to the Unemployment Compensation Fund is subject to having any state income tax refund to which he or she may be entitled intercepted pursuant to § 26-36-301 et seq., as administered by the Revenue Division of the Department of Finance and Administration.

(d)(1) When an overpayment becomes final under § 11-10-527, the director shall present a certificate of overpayment describing the amount owed by the claimant to the circuit clerk of the county where the claimant is domiciled.

(2) The circuit clerk shall enter the certificate of overpayment in the docket of the circuit court for judgments and decrees and note the time of the filing of the certificate.

(3) After entry by the circuit clerk, the certificate of overpayment shall have the force of a judgment of the circuit court and shall bear interest at the rate of ten percent (10%) annually.

(4) An interest payment recovered from an overpayment to a claimant shall be deposited into the Department of Workforce Services Special Fund.

(5) A penalty payment recovered from an overpayment to a claimant shall be deposited into the Unemployment Compensation Fund.

(e) The federal income tax refund of a person held liable to repay an amount to the Unemployment Compensation Fund is subject to interception under the Claims Resolution Act of 2010, Pub. L. No. 111-291, or a regulation adopted to implement that law.

(f) The Department of Workforce Services may issue an overpayment determination contemporaneously with any other determination.

(g) The deductions from future benefits provided for in subdivisions (a)(1) and (b)(2) of this section may proceed during an appeal of the overpayment determination.

History. Acts 1941, No. 391, § 6; 1963, No. 93, § 8; 1981, No. 43, § 10; 1985, No. 8, § 7; 1985, No. 9, § 7; A.S.A. 1947, § 81-1107; Acts 1987, No. 753, § 16; 1993, No. 6, § 10; 1997, No. 234, § 21; 1999, No. 1116, §§ 13, 14; 2001, No. 1367, § 8; 2005, No. 902, § 7; 2007, No. 490, § 9; 2009, No. 802, §§ 9–11; 2011, No. 1040, § 3; 2013, No. 956, § 3.

Amendments. The 2013 amendment substituted "Unemployment Compensation Fund" for "fund" in (b)(1), (c), and (e); rewrote (a)(1), (a)(3), and (e); substituted "An interest" for "Any interest or penalty" in (d)(4); and inserted (d)(5), (f), and (g).

CASE NOTES

Overpayment.

In a case concerning the repayment of unemployment benefits under subsection (b) of this section, a claimant was at fault in causing an overpayment for the time period after she filed a disability claim. However, a remand was necessary as to whether the claimant was at fault for overpayment during the time period before she filed for disability; although the claimant was subsequently determined by the Social Security Administration to be totally disabled for this time period, the claimant thought she was physically capable of working according to her testimony. Johnson v. Dir., Dep't of Workforce Servs., 2013 Ark. App. 74, — S.W.3d — (2013).

11-10-543. Extended benefits — Failure to accept or seek suitable work.

(a) Notwithstanding the provisions of § 11-10-535, an individual shall be ineligible for payment of extended benefits for any week of unemployment in his or her eligibility period if the Director of the Department of Workforce Services finds that during that period:

(1) He or she failed to accept any offer of suitable work or failed to apply for any suitable work as defined under subsection (c) of this section to which he or she was referred by the director; or

(2) He or she failed to actively engage in seeking work as prescribed under subsection (f) of this section, unless he or she did not actively engage in seeking work because he or she was before any court of the United States or of any state pursuant to a lawfully issued summons to appear for jury duty. In that event, his or her entitlement to benefits

shall be decided pursuant to the able and available requirements of § 11-10-507, without regard to the disqualification provisions otherwise applicable under subsection (b) of this section.

(b) Any individual who has been found ineligible for extended benefits by reason of the provision in subsection (a) of this section shall also be ineligible for extended benefits beginning with the first day of the week following the week in which the failure occurred and until he or she has been employed in each of four (4) subsequent weeks, whether or not consecutive, and has earned remuneration equal to not less than four (4) times his or her extended weekly benefit amount.

(c) For purposes of this section, the term "suitable work" means, with respect to any individual, any work that is within the individual's capabilities, provided that:

(1) The gross average weekly remuneration payable for the work exceeds the sum of the individual's average weekly benefit amount, as determined under § 11-10-537, plus the amount, if any, of supplemental unemployment benefits, as defined in section 501(c)(17)(D) of the Internal Revenue Code of 1954 payable to the individual for that week; and

(2) The work pays wages equal to the higher of:

(A) The minimum wages provided by § 6(a)(1) of the Fair Labor Standards Act of 1938, without regard to any exemption; or

(B) The state or local minimum wage.

(d) No individual shall be denied extended benefits for failure to accept an offer of, or referral to, any job which meets the definition of suitability as described in subsection (c) of this section if:

(1) The position was not offered to the individual in writing and was not listed with the employment service;

(2) The failure could not result in a denial of benefits under the definition of suitable work for regular benefit claimants in § 11-10-515 to the extent that the criteria of suitability in that section are not inconsistent with the provisions of this section; or

(3) The individual furnishes satisfactory evidence to the director that his or her prospects for obtaining work in his or her customary occupation within a reasonably short period are good. If evidence is deemed satisfactory for this purpose, the determination of whether any work is suitable with respect to an individual shall be made in accordance with the definition of suitable work in § 11-10-515 without regard to the definition specified by this section.

(e) Notwithstanding the provision of this section to the contrary, no work shall be deemed to be suitable work for an individual that does not accord with the labor standard provisions required by section 3304(a)(5) of the Internal Revenue Code of 1954 and set forth herein under § 11-10-515.

(f) For the purposes of subdivision (a)(2) of this section, an individual shall be treated as actively engaged in seeking work during any week if:

(1) The individual has engaged in a systematic and sustained effort to obtain work during the week; and

(2) The individual furnishes tangible evidence that he or she has engaged in effort during the week.

(g) The employment service shall refer any claimant entitled to extended benefits under this chapter to any suitable work which meets the criteria prescribed in subsections (c) and (d) of this section.

(h) An individual shall not be eligible to receive extended benefits with respect to any week of unemployment in his or her eligibility period if the individual has been disqualified for regular benefits under this chapter because he or she voluntarily left work, was discharged for misconduct, or refused an offer of suitable work unless the disqualification imposed for those reasons was satisfied with employment.

(i) The Department of Workforce Services shall enforce this section.

(j) The director shall make quarterly reports to the Legislative Council on the department's efforts to enforce this section, including without limitation:

(1) The number of cases of benefit recipients accused of not accepting valid job offers;

(2) The disposition of cases reported under subdivision (j)(1) of this section; and

(3) The policies and steps the department is taking to eliminate and reduce refusals to accept valid job offers.

(k)(1) The department shall facilitate electronic reporting of a benefit recipient who refuses to take an offered job either through outright refusal, failing a drug test, or other means.

(2) The department may facilitate electronic reporting under subdivision (k)(1) of this section by an easy–to–understand and –use website created for the purpose or created for another purpose that facilitates easy reporting by potential employers and others.

(l)(1) The department shall notify periodically an employer regarding the method for reporting a benefit recipient who fails to take a job either through outright refusal, failing a drug test, or other means.

(2) The department may notify an employer at least two times (2) per year regarding the method for reporting under subdivision (l)(1) of this section by electronic means that are economically feasible and may be a part of another communication to the employer.

(m)(1) An employer that provides a report with the belief that it is true of a failure to take a job, whether by outright refusal, failure to show up for work or interview, failing a drug test, or other means is not liable for the reporting.

(2) This section provides a complete defense for an employer in a civil proceeding arising from an employer's actions under this section.

History. Acts 1971, No. 35, § 21; 1981, No. 43, § 19; 1985, No. 8, § 31; 1985, No. 9, § 31; A.S.A. 1947, § 81-1124; Acts 2013, No. 1040, § 1.

Amendments. The 2013 amendment added (i) through (m).

Subchapter 6 — Shared Work Plans

SECTION.

Effective Dates. Acts 2013, No. 956, § 10: Emergency clause failed to pass. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that the Department of Workforce Services must ensure the prompt determination of claims for unemployment insurance benefits; that the state's unemployment insurance program must remain in conformity with federal law requirements; and that this act is immediately necessary because a delay would interfere with continued provision of benefits and services to eligible persons. Therefore, an emergency is declared to exist, and this act being necessary for the preservation of the public peace, health, and safety shall become effective on July 1, 2013."

11-10-604. Criteria for approval.

(a) An employer wishing to participate in a shared work program shall submit a signed written shared work compensation plan to the Director of the Department of Workforce Services for approval.

(b) The director shall approve a shared work unemployment compensation plan only if the following criteria are met:

(1) The plan:

(A) Applies to and identifies the specified affected group; and

(B) Includes an estimate of the number of layoffs that might occur absent participation in the shared work program;

(2) The employees in the affected group or groups are identified by name, social security number, and by any other information required by the director;

(3) The usual weekly hours of work for employees in the affected group or groups are reduced by not less than ten percent (10%) and not more than forty percent (40%);

(4)(A) Health benefits and retirement benefits under defined benefit pension plans, as defined in Section 3(35) of the Employee Retirement Income Security Act of 1974, Pub. L. No. 93-406, and other fringe benefits will continue to be provided to employees in the affected group or groups as though their work weeks had not been reduced.

(B) However, if the employer reduces the level of benefits under subdivision (4)(A) of this section for its employees who are not in the shared work group, the level of benefits may be reduced by a like amount for the employer's shared work employees;

(5) The plan certifies that the aggregate reduction in work hours is in lieu of all layoffs that would have affected at least ten percent (10%) of the employees in the affected group or groups to which the plan applies and that would have resulted in an equivalent reduction in work hours;

(6) During the previous four (4) months, the work force in the affected group has not been reduced by temporary layoffs of more than ten percent (10%) of the workers;

(7)(A) The plan applies to at least ten percent (10%) of the employees in the affected group.

(B)(i) If the plan applies to all employees in the affected group, the plan provides equal treatment to all employees of the group.

(ii) If the affected group is divided into subgroups, the plan provides equal treatment to employees within each subgroup;

(8)(A)(i) In the case of employees represented by an exclusive bargaining representative, the plan is approved in writing by the collective bargaining agent.

(ii) If the certification of an exclusive bargaining representative has been appealed, the bargaining representative shall be considered to be the exclusive bargaining representative for work sharing plan purposes.

(B)(i) The plan shall contain a certification by the employer that the employer has made the proposed plan available to:

(a) Each employee in the affected group for inspection; or

(b) If applicable, to the exclusive bargaining representative.

(ii) The plan shall include:

(a) A description of how the plan was made available; and

(b) If advance notice of the plan was not feasible, an explanation of why advance notice was not feasible;

(9)(A) The plan includes a certified statement by the employer that the terms and implementation of the shared work plan are consistent with any obligations the employer has under applicable federal and state laws.

(B) An employee who joins an affected group after the approval of the shared work plan is automatically covered under the previously approved plan, effective the week that the director receives written notice from the shared work employer that the employee has joined;

(10) On the most recent computation date preceding the date of submission of the shared work plan for approval, the total of all contributions paid on the employing unit's own behalf and credited to its account for all previous periods equaled or exceeded the regular benefits charged to its account for all previous periods;

(11) The plan shall not serve as a subsidy of seasonal employment during the off-season nor as a subsidy of temporary part-time employment or intermittent employment; and

(12) The employer agrees to:

(A) Furnish reports relating to the proper conduct of the plan;

(B) Allow the director or his or her authorized representatives access to all records necessary to verify the plan before approval; and

(C) Allow the director to monitor and evaluate application of the plan after approval.

History. Acts 1985, No. 329, § 1; 1985, No. 813, § 1; A.S.A. 1947, § 81-1104n; Acts 1987, No. 753, § 7; 1991, No. 100, §§ 35, 36; 2013, No. 956, § 4.

Amendments. The 2013 amendment rewrote (b).

11-10-609. Eligibility for compensation.

(a) An individual is eligible to receive shared work unemployment compensation benefits with respect to any week only if, in addition to monetary entitlement, the Director of the Department of Workforce Services finds that:

(1) During the week, the individual is employed as a member of an affected group under an approved shared work compensation plan that was approved before that week, and the plan is in effect with respect to the week for which the benefits are claimed;

(2)(A) During the week, the individual is able to work and is available for the normal work week with the shared work employer.

(B) However, an otherwise eligible individual shall not be denied benefits with respect to any week in which he or she is in training to enhance job skills, including employer-sponsored training and worker training funded under the Arkansas Workforce Investment Act, § 15-4-2201 et seq., if the training has been approved by the director.

(b) Notwithstanding any other provisions of this chapter to the contrary, an individual is deemed unemployed in any week for which remuneration is payable to him or her as an employee in an affected group for ninety percent (90%) or less than his or her normal weekly hours of work as specified under the approved shared work compensation plan in effect for the week.

(c) Notwithstanding any other provisions of this chapter to the contrary, an individual shall not be denied shared work unemployment compensation benefits for any week by reason of the application of provisions relating to availability for work and active search for work with an employer other than the shared work unemployment compensation employer.

History. Acts 1985, No. 329, § 1; 1985, No. 813, § 1; A.S.A. 1947, § 81-1104n; Acts 2013, No. 956, § 5.

Amendments. The 2013 amendment inserted (a)(2)(B); and redesignated (3) and (4) as (b) and (c).

Subchapter 7 — Contributions

Effective Dates. Acts 2013, No. 956, § 10: Emergency clause failed to pass. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that the Department of Workforce Services must ensure the prompt determination of claims for unemployment insurance benefits; that the state's unemployment insurance program must remain in conformity with federal law requirements; and that this act is immediately necessary because a delay would interfere with continued provision of benefits and services to eligible persons. Therefore, an emergency is declared to exist, and this act being necessary for the preservation of the public peace, health, and safety shall become effective on July 1, 2013."

11-10-703. Future rates — Maintenance of separate accounts.

(a)(1)(A) The Director of the Department of Workforce Services shall maintain a separate account for each employer and shall credit the employer's account with all the contributions paid on the employer's own behalf except as otherwise provided in §§ 11-10-701 — 11-10-715.

(B) However, nothing in this chapter shall be construed to grant any employer or individuals in the employer's service prior claims or rights to the amounts paid by the employer into the fund either on the employer's behalf or on behalf of such individuals.

(2)(A)(i) Regular benefits paid to an eligible individual based on an initial claim shall be charged to the separate account of each employer in the base period in the proportion to which wages paid by each employer to the individual during the base period bears to total wages paid by all such employers to such individual within the base period.

(ii)*(a)* However, regular benefits paid to an eligible individual after the individual has established a benefit year against a base-period employer under qualifying conditions and whose employment continued with the employer but who subsequently left the employment under conditions that would have been a noncharge under subdivisions (a)(3) and (4) of this section shall be charged through the date on which the subsequent separation occurred to the separate account of the base-period employer.

(b) Benefits paid from the established benefit year to an individual after the date on which the subsequent separation occurred shall not be charged to the separate account of the base-period employer.

(B) Nothing in §§ 11-10-701 — 11-10-715 shall be construed to limit regular benefits payable pursuant to §§ 11-10-501 — 11-10-506 and 11-10-609 — 11-10-613.

(3) However, regular benefit payments shall not be charged to the separate account of any employer if the employer provides the director with notices regarding separation from work as are required by regulations of the director if the director finds that:

(A) The claimant voluntarily left the employer without good cause connected with the work; or

(B) The claimant was discharged by the employer for misconduct connected with the work.

(4) Benefits paid to an individual who continues to remain in the employ of a base-period employer without a reduction in the number of hours worked or wages paid shall not be charged to the separate account of the employer, provided that the individual is not employed on an as-needed or on-call basis.

(5) Benefits paid during an extended benefit period in accordance with §§ 11-10-534 — 11-10-543 shall not be charged to the separate account of each employer in the base period except as may otherwise be provided in §§ 11-10-701 — 11-10-715.

(6) Relief from charges shall not be granted if:

(A) An overpayment of benefits is the result of a failure by an employer or the employer's agent to respond timely or adequately to a request for information from the Department of Workforce Services; and

(B) The employer or the employer's agent has established a pattern of failing to respond to such requests.

(b) Benefit payments made to any individual whose base-period wages include wages for previously uncovered services as defined in § 11-10-507(5)(C) shall not be charged to the separate account of any employer to the extent that the Unemployment Compensation Fund is reimbursed for the benefits pursuant to § 121 of Pub. L. No. 94-566.

History. Acts 1941, No. 391, § 7; 1949, No. 155, § 8; 1953, No. 162, § 11; 1955, No. 395, § 21; 1963, No. 93, § 9; 1971, No. 35, §§ 11-13; 1973, No. 350, §§ 2, 3; 1975, No. 609, § 6; 1977, No. 376, § 12; 1981, No. 43, § 11; 1983, No. 482, § 26; A.S.A. 1947, § 81-1108; Acts 1995, No. 519, § 8; 1997, No. 234, § 22; 2007, No. 490, § 10; 2013, No. 956, § 6.

Amendments. The 2013 amendment added (a)(6).

11-10-705. Future rates — Computation of contribution rates.

(a)(1) Each employer's contribution rate beginning January 1 for each twelve-month period shall be determined on the basis of the employer's record through June 30 of the previous calendar year.

(2) The record of an employer shall include, for the purpose of computing an employer's contribution rate, any payment, except a payment that represents a stabilization tax payment or a payment that represents an extended benefit tax payment, made by the employer on or before July 31 on wages paid by the employer on or before June 30 of the calendar year.

(b)(1)(A) The contribution rate of an employer who has had three (3) or more years of benefit risk as defined at § 11-10-707 shall be that shown on the corresponding line that reflects the employer's reserve ratio in the contribution rate schedule which follows.

(B) The reserve ratio in the following schedule is determined by dividing the difference in contributions paid and regular benefits charged by the annual taxable payroll:

CONTRIBUTION RATE	RESERVE RATIO
0.1%	9.95% or more
0.3%	9.35% but less than 9.95%
0.5%	8.85% but less than 9.35%
0.8%	8.65% but less than 8.85%
1.2%	8.35% but less than 8.65%
1.6%	7.95% but less than 8.35%
2.0%	7.35% but less than 7.95%
2.4%	6.75% but less than 7.35%
2.8%	5.45% but less than 6.75%
3.2%	2.45% but less than 5.45%
4.0%	1.35% but less than 2.45%
5.0%	Less than 1.35% with a positive reserve balance
6.0%	Less than 0.00%

(2)(A) Notwithstanding any other provision of this chapter, for any calendar year beginning on and after January 1, 2008, an employer that has been assigned a contribution rate of six percent (6%) pursuant to this chapter and that has had such a rate for the two (2) preceding calendar years will be assigned an additional contribution assessment of two percent (2%).

(B) Furthermore, after two (2) consecutive years of being assessed an additional contribution of two percent (2%) under subdivision (b)(2)(A) of this section, this additional contribution assessment shall increase to four percent (4%).

(C) Furthermore, for calendar years beginning January 1, 2014, and thereafter, after two (2) consecutive years of being assessed an additional contribution of four percent (4%) under subdivision (b)(2)(B) of this section, the additional contribution assessment shall increase to six percent (6%).

(D) Furthermore, for calendar years beginning January 1, 2014, and thereafter, after two (2) consecutive years of being assessed an additional contribution of six percent (6%) under subdivision (b)(2)(C) of this section, the additional contribution assessment shall increase to eight percent (8%).

(c)(1)(A) Notwithstanding any other provisions of this chapter and unless prohibited by § 11-10-723(c)(1), an employer that has been assigned a contribution rate pursuant to this chapter may make a voluntary payment to the Unemployment Compensation Trust Fund Account, in addition to the contributions required pursuant to this chapter, to be credited to the employer's account.

(B) The Director of the Department of Workforce Services shall provide to each eligible employer an annual notice of voluntary payment amounts that may be submitted to reduce the employer's contribution rate.

(2)(A)(i) Voluntary payments to the fund under subdivision (c)(1) of this section shall be made no later than March 31 of the calendar year for which the new contribution rate is effective.

(ii) Upon receipt of a timely voluntary payment, the director shall compute a new contribution rate for the employer and provide notice to the employer of the new contribution rate.

(B) Any adjustments made under §§ 11-10-703 — 11-10-708 shall be used only in the form of credit against accrued or future contributions.

(C) No refund shall ever be made to any employer of any voluntary payment so made.

History. Acts 1941, No. 391, § 7; 1947, No. 398, § 6; 1949, No. 155, § 10; 1953, No. 162, § 12; 1955, No. 395, § 23; 1959, No. 142, § 1A; 1963, No. 93, § 9; 1971, No. 35, §§ 11-13; 1981, No. 43, § 12; 1983, No. 482, § 27; A.S.A. 1947, § 81-1108; Acts 1989, No. 420, §§ 8, 9; 1991, No. 48, § 7; 1997, No. 234, § 23; 1999, No. 1055, § 1; 2001, No. 964, § 1; 2001, No. 1367, § 9; 2005, No. 902, § 9; 2007, No. 490, § 11; 2013, No. 1191, § 1.

Amendments. The 2013 amendment added (b)(2)(C) and (b)(2)(D).

11-10-710. Transfer of experience.

(a)(1) Unless otherwise provided in § 11-10-723, any employing unit that acquires the organization, trade, and all of the places of business and substantially all of the assets of any employer, excepting, in any such case, any assets retained by the employer incident to the liquidation of the employer's obligations, whether or not the acquiring employing unit was an employing unit within the meaning of § 11-10-208 prior to the acquisition, and that continues the organization, trade, or business as indicated by retaining the predecessor employer's three-digit, North American Industry Classification System code, shall assume the predecessor employer's actual contributions, regular benefit experience, annual payrolls, liability for current or delinquent contributions, interest, penalty, and otherwise as if no change with respect to the separate account, actual experience, and payrolls or the position of the predecessor employer otherwise had occurred and as if the operations of the predecessor employer had at all times been carried on by the successor employing unit.

(2) The separate account of the predecessor employer shall be transferred by the Director of the Department of Workforce Services to the successor employing unit and, as of the date of the acquisition, shall become the separate account or part of the separate account, as the case may be, of the successor employing unit, and the regular benefits thereafter chargeable to the predecessor employer on account of employment prior to the date of the acquisition shall be charged to the separate account of the successor employing unit.

(b)(1) However, unless otherwise provided in § 11-10-723, if any employing unit acquires a segregable and identifiable portion of the business of any employer, whether the acquiring employing unit was an employing unit within the meaning of § 11-10-208 prior to the acqui-

sition, and whether the acquisition is the result of reorganization, purchase, inheritance, receivership, or for any other cause, and if the successor employing unit desires to obtain any benefit of the predecessor employer's experience, the successor employing unit must file with the director a petition, signed by all interested parties, within thirty (30) days after the acquisition setting out the percentage of the predecessor employer's actual contributions, regular benefit experience, annual payrolls, payment of contributions, and otherwise that should be transferred to the successor employing unit's separate account.

(2)(A) If the director finds the facts substantially as represented in the petition and that all contributions due by the successor employing unit have been paid, he or she shall transfer the proportionate share of the predecessor employer's separate account to the successor employing unit.

(B) Effective the date of the acquisition, the account transferred under subdivision (b)(2)(A) of this section shall become the separate account or part of the separate account, as the case may be, of the successor employing unit as if no change with respect to the proportionate share of the separate account had occurred.

(c)(1) Following a transfer as described in subsection (a) or subsection (b) of this section, the contribution rate of the successor employing unit shall be determined as follows:

(A) If the successor employing unit is an employer as defined in § 11-10-209 at the time of the transfer and has been assigned a contribution rate under this section, the successor employing unit shall continue to pay contributions at the previously assigned contribution rate through the end of the rate year;

(B) If the successor employing unit is not an employer as defined in § 11-10-209 at the time of the transfer and acquires the business of one (1) employer or the businesses of two (2) or more employers with the same contribution rate, the successor employing unit shall pay contributions at the contribution rate assigned to the predecessor employer or employers from the date the transfer occurred through the end of the rate year; and

(C) If the successor employing unit is not an employer as defined in § 11-10-209 at the time of the transfer and simultaneously acquires the businesses of two (2) or more employers with different rates of contributions, the successor employing unit's contribution rate from the date the transfer occurred through the end of the rate year shall be computed on the combined experience of the predecessor employers as of the regular computation date for the rate year in which the transfer occurred.

(2)(A) From and after the end of the rate year in which the transfer occurred, the successor employing unit's rate of contribution for each rate year following the transfer shall be based on the successor employing unit's experience combined with the experience of the predecessor employer or employers as of the regular computation date for the rate year.

(B) However, if at the regular computation date the successor employing unit and the predecessor employer or employers have less than three (3) years of benefit risk as defined in § 11-10-707(d):

(i) The contribution rate shall be the new employer contribution rate as set forth in § 11-10-704(b)(1); and

(ii) The three (3) years of benefit risk shall be calculated using the established new employer calculation date of the successor employing unit or the calculation date of the predecessor employer or employers, whichever date is the earliest.

(d)(1)(A) The director shall give notice of the determination he or she makes under subsection (a) or subsection (b) of this section to the predecessor employer unless the predecessor employer has consented to the transfer of experience and to the successor employing unit.

(B) The notice shall become conclusive and binding upon each employing unit unless, within twenty (20) days after the mailing date of the notice to the employing unit's last known mailing address, an application for review and redetermination is filed with the director setting forth the employing unit's reasons for seeking a review and redetermination.

(2)(A)(i)*(a)* The director may deny the application if he or she finds the reasons set forth by the employing unit making application for review and redetermination are insufficient to change his or her determination.

(b) Otherwise, the application for review and redetermination shall be granted, and the director shall make a redetermination.

(ii) The director may issue a redetermination within one (1) year of the original determination if, through his or her own investigation, he or she finds the original determination to be in error.

(B) The director shall promptly notify the parties to the review and redetermination of his or her decision by mailing the denial of redetermination to their last known addresses.

(C) The denial of an application for review and redetermination is final and conclusive as of the mailing date of the director's notification.

(3) A party to a review and redetermination under subdivision (d)(2) of this section may appeal from the determination or redetermination of the director by filing a petition with the clerk of the circuit court in the county of the party's residence, if the residence is in Arkansas, or the clerk of the Pulaski County Circuit Court, Arkansas, within thirty (30) days of the mailing date of the director's notice of determination or redetermination.

History. Acts 1941, No. 391, § 7; 1943, No. 256, § 1; 1945, No. 8, § 1; 1947, No. 398, § 7; 1949, No. 155, § 11; 1953, No. 162, § 14; 1955, No. 395, § 26; 1959, No. 32, § 1; 1963, No. 93, § 9; 1971, No. 35, § 14; 1985, No. 8, § 11; 1985, No. 9, § 11; A.S.A. 1947, § 81-1108; Acts 1991, No. 48, § 9; 1991, No. 100, § 43; 2003, No. 1223, § 12; 2005, No. 902, § 10; 2007, No. 490, § 14; 2013, No. 1128, § 2.

Amendments. The 2013 amendment inserted "subsection" preceding "(b)" in (c)(1); and substituted "under" for "pursuant to the provisions of" in (c)(1)(A).

11-10-713. Employees of nonprofit organizations and governmental entities.

(a) Benefits paid to individuals based on wages paid by any nonprofit organization or government employing unit shall be financed in accordance with this section.

(b) As used in this section and § 11-10-714:

(1) A "government employing unit" is one for which service in employment as defined in § 11-10-210(a)(2) is performed; and

(2) A "nonprofit organization" is an organization for which service in employment as defined in § 11-10-210(a)(3) is performed and which is exempt from income tax under section 501(a) of the Internal Revenue Code of 1954;

(3) "Wages" are not limited by any amount specified in § 11-10-215.

(c)(1) Any nonprofit organization or government employing unit which, pursuant to § 11-10-210(a)(2) or (3), is subject to this chapter shall pay contributions under § 11-10-701 unless it elects, in accordance with this subsection, to pay to the Director of the Department of Workforce Services for the Unemployment Compensation Fund an amount equal to the amount of regular benefits and, to the extent that the fund is not reimbursed for the extended benefits in accordance with section 204 of the Federal-State Extended Unemployment Compensation Act of 1970, the extended benefits paid, based on wages paid by the employer to individuals for weeks of unemployment that begin during the effective period of the election.

(2) Any nonprofit organization or government employing unit that is or becomes subject to this chapter may elect to become liable for payments in lieu of contributions for a period of not less than one (1) calendar year, provided that it files with the director a written notice of its election within the thirty-day period immediately following the date it becomes subject to this chapter.

(3) Any nonprofit organization or any government employing unit that makes an election in accordance with subdivision (c)(2) of this section shall continue to be liable for payments in lieu of contributions until it files with the director a written notice terminating its election not later than thirty (30) days prior to the beginning of the calendar year for which the termination shall first be effective.

(4)(A) Any nonprofit organization or any government employing unit that has been paying contributions under this chapter for a period subsequent to January 1, 1972, may change to a reimbursable basis by filing with the director not later than thirty (30) days prior to the beginning of any calendar year a written notice of election to become liable for payments in lieu of contributions.

(B) The election shall not be terminable by the employer for that and the next calendar year.

(5)(A) The director may, for good cause, extend the period within which a notice of election, or a notice of termination, must be filed.

(B) He or she may permit an election to be retroactive for a period not to begin earlier than the first day of the current calendar year.

(6)(A) The director, in accordance with such regulations as he or she may prescribe, shall notify each employer filing an election notice of any determination that he or she may make under this section and of the effective date or the termination date of the election.

(B) The determinations shall be subject to reconsideration, appeal, and review in accordance with § 11-10-308.

(7) Any nonprofit organization or any government employing unit that elects to make payments in lieu of contributions into the fund as provided in this subsection shall not be liable to make payments with respect to the benefits paid to any individual whose base-period wages include wages for previously uncovered services as defined in § 11-10-507(5)(C) to the extent that the fund is reimbursed for benefits pursuant to § 121 of Pub. L. No. 94-566.

(d)(1) At the end of each calendar quarter, the director shall, except as otherwise may be provided in subsection (e) of this section, bill each employer that has elected to make payments in lieu of contributions for an amount equal to the full amount of the regular benefits and, to the extent that the fund is not reimbursed for the extended benefits in accordance with section 204 of the Federal-State Extended Unemployment Compensation Act of 1970 the extended benefits paid to individuals during the calendar quarter that are based on wages paid by the employer.

(2)(A) The amount due specified in any bill from the director shall be conclusive and binding on the employer unless, not later than thirty (30) days after the bill was mailed to the employer's last known address or was otherwise delivered, the employer files an application for redetermination by the director.

(B) The director shall promptly review and reconsider the amount due specified in the bill and shall issue a redetermination in any case in which the application for redetermination has been filed.

(C) Any redetermination shall be conclusive and binding unless, not later than thirty (30) days after the redetermination was mailed to the employer's last known address or was otherwise delivered, the employer appeals the redetermination of the director by filing a petition with the clerk of the circuit court in the county of the employer's residence, if the residence is in Arkansas, or the clerk of the Pulaski County Circuit Court, Arkansas.

(3) Payment of any bill rendered under subdivision (d)(1) of this section shall be made not later than thirty (30) days after the bill was mailed to the last known address of the employer or was otherwise delivered to the employer unless there has been an application for review and redetermination in accordance with subdivision (d)(2) of this section.

(4) Payments made by any employer under this section shall not be deducted or deductible, in whole or in part, from the remuneration of individuals in the employ of the employer.

(5)(A) Past due payments of amounts in lieu of contributions shall be subject to the same interest and penalties that, pursuant to §§ 11-10-716 — 11-10-722, apply to past due contributions.

(B) Also, unpaid amounts in lieu of contributions are subject to the same assessment and civil action and other collection provisions of this chapter as apply to unpaid contributions.

(C) Furthermore, the provisions of this chapter which provide for the adjustment or refund of contributions shall apply to the adjustment or refund of payments in lieu of contributions.

(D) Any goods, chattels, moneys, or credits belonging to a private nonprofit employer or political subdivision of this state or any instrumentality of one (1) or more states or political subdivisions and that are in the hands or possession of the State of Arkansas shall be subject to levy or garnishment as provided by law for the satisfaction of any past due payments in lieu of contributions of the employer.

(e) Payments in lieu of contributions shall be made in accordance with the following provisions:

(1)(A) Each state government employing unit for which services as defined in § 11-10-210(a)(2)(A) are performed and that is liable for payments in lieu of contributions shall, at the end of each calendar quarter, pay to the director an amount equal to the full amount of regular benefits, and to the extent that the fund is not reimbursed for the extended benefits in accordance with section 204 of the Federal-State Extended Unemployment Compensation Act of 1970, the extended benefits paid to individuals based on wages paid by the state government employing unit regardless of the source of funds from which the wages are paid.

(B) The benefits shall be financed by appropriation of funds by the General Assembly.

(C) The Department of Workforce Services shall bill and the Chief Fiscal Officer of the State shall promptly reimburse the department for such benefit payments in accordance with subsection (d) of this section; and

(2)(A)(i) Each private nonprofit employer and each government employing unit for which services as defined in § 11-10-210(a)(2)(B) are performed and that has elected to make payment in lieu of contributions shall, for calendar quarters beginning on and after January 1, 1979, pay such amount as the employer may estimate to be the amount of regular benefits and one-half (½) of the extended benefits, except that government employing units shall include all of the extended benefits expected to be paid to individuals based on wages paid by the employer during the period.

(ii)*(a)* The payments shall be made on or before the tenth day of the first month of each calendar quarter.

(b) The percentage used to determine the amount of quarterly payment due under this subdivision (e)(2) shall be determined by the director and shall be based on the average quarterly benefit cost of each employer during the fiscal year ending on June 30 of the immediately preceding calendar year.

(c) If any employer subject to this subdivision (e)(2) did not have wages in an immediately preceding fiscal year, the director shall

determine the average quarterly wages to be used in determining the amount of quarterly payment to be made in the current year by the employer. The determination shall be based on that portion of the fiscal year during which wages were paid.

(B) On December 31 of each calendar year or as soon thereafter as possible, the director shall determine whether the total amount of payments made for the year by the employer is less than or in excess of the total amount of benefit payments chargeable to the employer under this section. Each employer whose total payments for the year were less than the amount so determined shall be liable for payment of the unpaid balance and shall pay the amount due within thirty (30) days after the date on which the director shall mail to the employer a notice of the amount. If the total payment exceeds the amount so determined for the calendar year, all or a part of the excess may, at the option of the employer, be refunded to the employer or retained as part payment against future payments.

(C) If benefits paid to an individual are based on wages paid by one (1) or more employers that are liable for payments in lieu of contributions and on wages paid by one (1) or more employers who are liable for contributions or by two (2) or more employers that are liable for payments in lieu of contributions, the amount of benefits payable by each employer that is liable for payments in lieu of contributions shall be an amount which bears the same ratio to the total benefits paid to the individual as the total base-period wages paid to the individual by the employer bears to the total base-period wages paid to the individual by all of his or her base-period employers.

(f) If any employer is delinquent in making any payments in lieu of contributions as required under this section, the director may terminate the employer's election to make payments in lieu of contributions as of the beginning of the next calendar year, and the termination shall be effective for that and the next calendar year.

(g)(1)(A) Two (2) or more employers that have become liable for payments in lieu of contributions in accordance with subsection (c) of this section may file a joint application to the director for the establishment of a group account for the purpose of sharing the cost of benefits that are attributable to service in the employ of the employers.

(B) Each application shall identify and authorize a group representative to act as the group's agent for the purposes of this subsection.

(2) Upon his or her approval of the application, the director shall establish a group account for the employers effective as of the beginning of the calendar quarter in which he or she receives the application and shall notify the group's representative of the effective date of the account. The account shall remain in effect for not less than one (1) calendar year and thereafter until terminated at the discretion of the director or upon application by the group.

(3) Upon establishment of the account, each member of the group shall be liable for payments in lieu of contributions with respect to each calendar quarter in the amount that bears the same ratio to the total benefits paid in that quarter that are attributable to service performed in the employ of all members of the group as the total wages paid for service in employment by the member in that quarter bears to the total wages paid during the quarter for service performed in the employ of all members of the group.

(4) The director shall prescribe such regulations as he or she deems necessary with respect to applications for establishment, maintenance, and termination of group accounts that are authorized by this subsection, for addition of new members to, and withdrawal of active members from, the accounts, and for the determination of the amounts that are payable under this subsection by members of the group and the time and manner of the payments.

History. Acts 1941, No. 391, § 7; 1963, No. 93, § 9; 1971, No. 35, § 15; 1977, No. 376, § 13; 1979, No. 492, § 10; 1979, No. 922, § 10; 1981, No. 43, § 15; 1985, No. 8, §§ 12, 13; 1985, No. 9, §§ 12, 13; A.S.A. 1947, § 81-1108; Acts 1987, No. 753, § 17; 1991, No. 100, § 44; 2007, No. 490, § 15; 2013, No. 1128, § 3.

Amendments. The 2013 amendment added "and" at the end of (e)(1)(C).

Subchapter 8 — Unemployment Compensation Fund

SECTION.

Effective Dates. Acts 2013, No. 956, § 10: Emergency clause failed to pass. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that the Department of Workforce Services must ensure the prompt determination of claims for unemployment insurance benefits; that the state's unemployment insurance program must remain in conformity with federal law requirements; and that this act is immediately necessary because a delay would interfere with continued provision of benefits and services to eligible persons. Therefore, an emergency is declared to exist, and this act being necessary for the preservation of the public peace, health, and safety shall become effective on July 1, 2013."

11-10-801. Establishment and control.

(a) There is established as a special fund, separate and apart from all public moneys or funds of this state, an Unemployment Compensation Fund, which shall be administered by the Director of the Department of Workforce Services exclusively for the purposes of this chapter.

(b) The Unemployment Compensation Fund shall consist of:

(1) All the contributions collected under this chapter;

(2) All interest earned upon any money in the Unemployment Compensation Fund;

(3) All property or securities acquired in lieu of contributions or other liabilities to the Unemployment Compensation Fund;

(4) All earnings of property or securities acquired in lieu of contributions or other liabilities;

(5) All moneys recovered on losses sustained by the Unemployment Compensation Fund;

(6) All moneys received from the federal Unemployment Account in the federal Unemployment Trust Fund in accordance with Title XII of the Social Security Act;

(7) All moneys credited to this state's account in the federal Unemployment Trust Fund pursuant to section 903 of the Social Security Act;

(8) All moneys received for the Unemployment Compensation Fund from any other source;

(9) All moneys received from the federal government as reimbursements pursuant to section 204 of the Federal-State Extended Unemployment Compensation Act of 1970, Pub. L. No. 91-373;

(10) All moneys received from the stabilization tax under § 11-10-706, except the proceeds of § 11-10-706(f); and

(11) All moneys recovered as penalty payments under § 11-10-532(a)(3).

(c) All moneys in the fund shall be commingled and undivided.

History. Acts 1941, No. 391, § 9; 1947, No. 398, § 9; 1959, No. 142, § 1; 1965, No. 33, § 1; 1973, No. 350, § 4; A.S.A. 1947, § 81-1112; Acts 1997, No. 234, § 27; 2013, No. 956, § 7.

Amendments. The 2013 amendment substituted "Unemployment Compensation Fund" for "fund" throughout (b); added "acquired in lieu of contributions or other liabilities" in (b)(4); inserted "Pub. L. No. 91-373" in (b)(9); and added (b)(11).

Subchapter 9 — Division of State New Hire Registry

SECTION.

Effective Dates. Acts 2013, No. 956, § 10: Emergency clause failed to pass. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that the Department of Workforce Services must ensure the prompt determination of claims for unemployment insurance benefits; that the state's unemployment insurance program must remain in conformity with federal law requirements; and that this act is immediately necessary because a delay would interfere with continued provision of benefits and services to eligible persons. Therefore, an emergency is declared to exist, and this act being necessary for the preservation of the public peace, health, and safety shall become effective on July 1, 2013."

11-10-902. Reporting requirements — Enforcement of child support obligations — Confidentiality.

(a) As used in this section:

(1) "Administrator" means the administrator of the State New Hire Registry;

(2) "Employee" means an individual who is an employee as defined in Chapter 24 of the Internal Revenue Code of 1986 but does not include an employee of a federal or state agency performing intelligence or counterintelligence operations if the head of the agency has determined that reporting pursuant to subsection (b) of this section could endanger the safety of the employee or could compromise an ongoing operation or investigation;

(3) "Employer" means an employer as that term is defined in § 3401(d) of the Internal Revenue Code of 1986 and includes any labor organization and any governmental entity; and

(4) "Labor organization" means a labor organization as that term is defined in § 2(5) of the National Labor Relations Act and includes any entity, sometimes known as a "hiring hall", that is used by the labor organization and an employer to carry out the requirements listed in § 8(f)(3) of the federal act of an agreement between the organization and the employer.

(b)(1) The administrator shall compile an automated state registry of newly hired and returning employees.

(2) An employer shall report electronically or in any manner authorized by the Department of Workforce Services for inclusion in the State New Hire Registry whenever an employee:

(A) Is newly hired; or

(B) If the individual was previously employed by the employer but has been separated from the previous employment for at least sixty (60) consecutive days, returns to work.

(3) An employer shall include in each report:

(A) The name, address, and social security number of the employee and the date the employee began performing services for the employer; and

(B) The name, address, and federal taxpayer identification number of the employer.

(4)(A) An employer shall make the report by submitting a copy of Internal Revenue Service Form W-4 for the employee or an equivalent form.

(B)(i) An employer may transmit the report by first class mail, magnetically, or electronically.

(ii) If an employer makes the report by mail, the reporting date is that of the postmark.

(C) The report shall be received not later than twenty (20) days after the date the employer hires the employee or, in the case of an employer transmitting reports magnetically or electronically, by two (2) monthly transmissions, if necessary, not less than twelve (12) days nor more than sixteen (16) days apart.

(5)(A) An employer that has employees employed in two (2) or more states and transmits reports magnetically or electronically may comply with the reporting requirements of this section by designating one (1) state in which the employer has employees and to which the employer will transmit the report required by this section.

(B) An employer that transmits reports shall notify the Secretary of the Department of Health and Human Services in writing as to which state the employer designates for the purpose of sending reports.

(c)(1) Information reported pursuant to this section shall be entered into the State New Hire Registry database maintained by the Department of Workforce Services or its designated contractor within five (5) business days of receipt from an employer. As used herein, "business day" means a day on which state offices are open for regular business.

(2) Within two (2) business days after the date information regarding a newly hired employee is entered into the State New Hire Registry, the Office of Child Support Enforcement of the Revenue Division of the Department of Finance and Administration shall transmit a notice to the employer directing the employer to withhold from the income of the employee an amount equal to the monthly or other periodic child support obligation, including any past due child support obligation, of the employee.

(3) Within three (3) business days after the date information regarding a newly hired employee is entered into the State New Hire Registry, the Department of Workforce Services or its designated contractor shall furnish the information to the National Directory of New Hires.

(4) On a quarterly basis, the State New Hire Registry shall furnish to the National Directory of New Hires extracts of reporting required to be made to the Secretary of Labor concerning the wages and unemployment compensation paid to individuals by such dates, in such format, and containing such information as the Secretary of the Department of Health and Human Services shall specify in regulations.

(5)(A) The Department of Human Services shall have access to information reported by employers pursuant to this section for the purpose of verifying eligibility for programs pursuant to 42 U.S.C. § 1320b-7.

(B) The Department of Workforce Services shall have access to information reported by employers pursuant to this section for purposes of administering the Department of Workforce Services' programs.

(C) The Workers' Compensation Commission shall have access to information reported by employers pursuant to this section for purposes of administering the workers' compensation programs.

(d)(1) The Department of Workforce Services shall directly or by contract conduct automated comparisons of the social security numbers reported by employers and the social security numbers appearing within records of the Office of Child Support Enforcement of the Revenue Division of the Department of Finance and Administration for cases being enforced under the Title IV-D State Plan.

(2) When an information comparison reveals a match with respect to the social security number of an individual required to provide child support under a support order, the State New Hire Registry shall immediately provide the Office of Child Support Enforcement of the Revenue Division of the Department of Finance and Administration with the name, address, and social security number of the employee to whom the social security number is assigned and the name, address, and federal employer identification number of the employer.

(e) The Office of Child Support Enforcement of the Revenue Division of the Department of Finance and Administration shall use information received pursuant to subsection (d) of this section to locate individuals for purposes of establishing paternity and establishing, modifying, and enforcing child support obligations and may disclose that information to its agents under contract for purposes connected to the administration of the Title IV-D Child Support Program.

(f) All information gathered and maintained by the State New Hire Registry:

(1) Shall be held confidential and be utilized solely for the purposes authorized in this section; and

(2) Is an exception to the open public record requirements of the Freedom of Information Act of 1967, § 25-19-101 et seq.

(g) To the maximum extent allowable, all expenses associated with the development and operation of the State New Hire Registry shall be reimbursed through available funding under the Title IV-D Child Support Program.

History. Acts 1997, No. 1276, § 2; 2009, No. 802, § 13; 2013, No. 956, § 8.

A.C.R.C. Notes. Acts 2013, No. 964, § 16, provided: "CARRY FORWARD — NEW HIRE REGISTRY. Any balance in the funds made available by this Act for the New Hire Registry which remain on June 30, 2014, may be carried forward into the next fiscal year, to be used for the same purpose.

"Any carry forward of unexpended balance of funding as authorized herein, may be carried forward under the following conditions:

"(1) Prior to June 30, 2014 the Agency shall by written statement set forth its reason(s) for the need to carry forward said funding to the Department of Finance and Administration Office of Budget;

"(2) The Department of Finance and Administration Office of Budget shall report to the Arkansas Legislative Council all amounts carried forward by the September Arkansas Legislative Council or Joint Budget Committee meeting which report shall include the name of the Agency, Board, Commission or Institution and the amount of the funding carried forward, the program name or line item, the funding source of that appropriation and a copy of the written request set forth in (1) above;

"(3) Each Agency, Board, Commission or Institution shall provide a written report to the Arkansas Legislative Council or Joint Budget Committee containing all information set forth in item (2) above, along with a written statement as to the current status of the project, contract, purpose etc. for which the carry forward was originally requested no later than thirty (30) days prior to the time the Agency, Board, Commission or Institution presents its budget request to the Arkansas Legislative Council/Joint Budget Committee; and

"(4) Thereupon, the Department of Finance and Administration shall include all information obtained in item (3) above in the budget manuals and/or a statement of non-compliance by the Agency, Board, Commission or Institution."

Amendments. The 2013 amendment

rewrote (b)(2) and (b)(3); and subdivided (b)(4) and (b)(5).

CHAPTER 13

ARKANSAS CONSERVATION CORPS ACT

SECTION.

11-13-101 — 11-13-113. [Repealed.]

Publisher's Notes. This chapter was repealed by Acts 2013, No. 1151, § 3. This chapter was derived from the following sources:

11-13-101. Acts 1993, No. 1232, § 1.

11-13-102. Acts 1993, No. 1232, § 2; 1997, No. 540, § 15; 1999, No. 646, § 3; 1999, No. 1164, § 119.

11-13-103. Acts 1993, No. 1232, §§ 3, 15.

11-13-104. Acts 1993, No. 1232, § 4.

11-13-105. Acts 1993, No. 1232, § 5.

11-13-106. Acts 1993, No. 1232, § 7.

11-13-107. Acts 1993, No. 1232, § 8.

11-13-108. Acts 1993, No. 1232, § 9.

11-13-109. Acts 1993, No. 1232, § 10.

11-13-110. Acts 1993, No. 1232, §§ 6, 11.

11-13-111. Acts 1993, No. 1232, § 13.

11-13-112. Acts 1993, No. 1232, § 14.

11-13-113. Acts 1993, No. 1232, § 12.

CHAPTER 15

VOLUNTARY VETERANS' PREFERENCE EMPLOYMENT POLICY

SECTION.

11-15-101. Title.

This chapter shall be known and may be cited as the "Voluntary Veterans' Preference Employment Policy Act".

History. Acts 2013, No. 598, § 1.

11-15-102. Definitions.

As used in this section:

(1) "DD 214" means a Department of Defense Report of Separation form or its predecessor or successor forms;

(2)(A) "Local government employer" means a municipality, a county, or township of the state that has issued a resolution to implement a veterans' preference employment policy under § 11-15-103.

(B) "Local government employer" does not include the state or a public institution of higher education;

(3)(A) "Private employer" means a sole proprietor, corporation, partnership, limited liability company, or other entity with one (1) or more employees.

(B) "Private employer" does not include the state or a public institution of higher education;

(4) "Spouse of a disabled veteran" means:

(A) The spouse of a veteran who has been classified by the United States Department of Veterans Affairs' Veterans Benefits Administration as having a permanent total disability rating; and

(B) A United States citizen;

(5) "Surviving spouse" means a spouse of a deceased veteran who is:

(A) Unmarried at the time he or she seeks a veterans' preference under § 11-15-103; and

(B) A United States citizen;

(6) "Veteran" means a person who:

(A) Served on active duty for a period of more than one hundred eighty (180) days and was discharged or released from active duty with other than a dishonorable discharge;

(B) Was discharged or released from active duty because of a service-connected disability; or

(C) As a member of a reserve component under an order to active duty, not to include training, was discharged or released from duty with other than a dishonorable discharge; and

(7) "Veterans' preference employment policy" means a private employer or local government employer's voluntary preference for hiring, promoting, or retaining a veteran, spouse of a disabled veteran, or surviving spouse of a veteran over another equally qualified applicant or employee.

History. Acts 2013, No. 598, § 1.

11-15-103. Voluntary veterans' preference employment policy — Private employment — Local government employment.

(a)(1) A private employer or local government employer may have a voluntary veterans' preference employment policy.

(2) The veterans' preference employment policy:

(A) Shall be in writing;

(B) Shall be applied uniformly to employment decisions regarding the hiring, promotion, or retention during a reduction in force; and

(C) May be modeled after §§ 21-3-302 (d)-(g) and 21-3-303 et seq.

(b) A veteran, spouse of a disabled veteran, or surviving spouse of a veteran shall submit a DD 214 of the veteran to a private employer or local government employer with a veterans' preference employment policy to be eligible for the preference.

History. Acts 2013, No. 598, § 1.

11-15-104. Registry — Participating employers.

The Department of Workforce Services shall maintain a registry of private employers and local government employers in Arkansas that have a voluntary veterans' preference employment policy.

History. Acts 2013, No. 598, § 1.

11-15-105. Verification of eligibility.

The Department of Veterans' Affairs and the Department of Workforce Services shall assist a private employer or a local government employer in determining if an applicant or employee is a veteran, spouse of a disabled veteran, or surviving spouse of a veteran.

History. Acts 2013, No. 598, § 1.